TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 225.

ELLEN J. O. PHINNEY, GERARD C. TOBEY, HORACE P. TOBEY, ET AL., PLAINTIFFS IN ERROR,

vs.

THE TRUSTEES OF THE SHEPPARD AND ENOCH PRATT HOSPITAL.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

FILED SEPTEMBER 9, 1904.

(17,506.)

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1 STATE OF MARYLAND, *sct:*

October Term, 1898.

At a court of appeals for the State of Maryland, begun and held for the said State, at the city of Annapolis, on the first Monday in October, being the third day of said month, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-second.

Hon. James McSherry.
" Henry Page.
" James A. Pearce.
" David Fowler.
" A. Hunter Boyd.
" Charles B. Roberts.
" John P. Briscoe.
" Wm. Sheppard Bryan.

Allan Rutherford, clerk.

Among others were the following proceedings, to wit:

2 Transcript of record from the circuit court No. 2 of Baltimore city to the court of appeals of Maryland in the consolidated cases of—

THE TRUSTEES OF THE SHEPPARD AND ENOCH PRATT HOSPITAL
vs.
JAMES A. GARY and ARNOLD S. HYDE, Executors, &c.

JAMES A. GARY and ARNOLD S. HYDE, Executors, &c.,
vs.
THE TRUSTEES OF THE SHEPPARD AND ENOCH PRATT HOSPITAL *et al.*

THE TRUSTEES OF THE SHEPPARD AND ENOCH PRATT HOSPITAL
vs.
JAMES A. GARY and ARNOLD S. HYDE, Executors, &c.

ISAAC PRATT, JUNIOR, and SUSANNA K. TOBEY
vs.
JAMES A. GARY and ARNOLD S. HYDE, Executors, &c., ET —.

Two appeals in one record.

Abner McKinley, Esq., E. J. D. Cross, Esq., solicitors for appellants Ellen J. O. Phinney *et al.*

W. Irvine Cross, Esq., solicitor for appellants Isaac Pratt, Junior, and Susanna K. Tobey.

William Pinkney Whyte, Esq., Messrs. Willis & Homer, Messrs. Barton & Wilmer, solicitors for appellees.

3 Appeal from the circuit court No. 2 of Baltimore city.

Bill of Complaint.

(Filed 7th March, 1898.)

THE TRUSTEES OF THE SHEPPARD AND Enoch Pratt Hospital *vs.* JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, Deceased.	In the Circuit Court No. 2 of Baltimore City. "Consolidated Cases."

To the honorable the judge of said court:

Your orators complaining, says:

1. That your orator is a corporation created and existing under the laws of the State of Maryland. By its original charter passed by the General Assembly of Maryland, as an act of the said General Assembly of Maryland at its January session, A. D. 1853, and the amendment thereto, passed at the January session of the General Assembly of Maryland, A. D. 1886, chapter 9, — was, and is now, under the additional amendment of its said charter provided by the act of the General Assembly of Maryland, at its January session A. D. 1898, chapter 17, able and capable in law to acquire and hold property, real, personal and mixed, by gift, devise or purchase, as will appear from inspection of the said act of assembly of 1853, chapter 274, and of the said amendment enacted in the Acts of Assembly of 1886, chapter 9; copies of which are herewith filed and marked "Plaintiff's Exhibit A and Plaintiff's Exhibit B," and which *is* prayed to be taken as a part of this bill of complaint.

2. That Enoch Pratt, late of Baltimore city, died on or about the 17th day of September, 1896, leaving a last will and testament with a codicil thereto duly executed, to pass real estate and personal property in this State.

4 3. That the said will and codicil were duly admitted to probate by the orphans' court of Baltimore city, and is now of record in the office of the register of wills of said city, in Liber T. W. M., No. 76, folio 537, &c.; and, on the 26th day of September, 1896, letters testamentary thereon were duly granted by the orphans' court of Baltimore city aforesaid, to the defendants herein named, James A. Gary and Arnold S. Hyde (Maria Louisa Pratt having been also named but who renounced and declined to act) the executors named therein, all of which will fully appear by reference to certified copies of said will, codicil and probate, to be hereafter filed, and letters testamentary herewith filed as part hereof, marked "Plaintiff's Exhibit C."

4. That the said James A. Gary and Arnold S. Hyde, as such executors, entered upon the duties of the said office and have passed one administration account in the said court, whereby it appears from the administration account so passed on the 27th day of March, 1897, that all the debts of the said testator have been paid,

which have come to the knowledge of the said executors after due notice to creditors by publication, as required by law, and that they have paid or secured the payment to the proper parties, all the cash and specific legacies in said will mentioned; and that a distribution of the balance of the estate then in their hands amounting to $854,626.43, with $10,447.22, which constituted a large part of the residuary estate of their said testator, as directed by the residuary clause of his said will, is now ready to be made, as being due and owing at this time to the residuary legatee and devisee named in said will; and your orator prays leave to file herewith certified copy of the said administration account.

5. That by the residuary clauses of the said will the testator devises and bequeaths the residue of his estate as follows: "Having in my lifetime liberally provided for my niece and nephews hereinafter named, I do now hereby give, devise and bequeath all the rest, residue and remainder of my estate of every kind and description, whether real, personal, mixed and whereon the same may be situate, of which I may die possessed or be, in any way, entitled to, at the time of my death, after payment of all debts, justly due by me, and after satisfying all the devises and bequests hereinafter set forth to the Trustees of the Sheppard Asylum, a corporation already incorporated by the General Assembly of the State of Maryland by said name, style and title and its successors forever it being my intention and meaning to make said corporation the Trustees of the Sheppard Asylum the residuary legatee and devisee, under this my last will and testament. And I direct my executors to set over, transfer and convey by proper deeds, assignments and transfers, the said residue of my estate to the said corporation, upon and subject however to the following condition and bargain namely:

That the said trustees shall adopt as the name and style of said corporation the title of the Trustees of the Sheppard and Enoch Pratt Hospital, and shall obtain at the first session of the General Assembly of Maryland, after my death, an amendment to their charter, authorizing the said change of title, and adopting the said name of 'the Trustees of the Sheppard and Enoch Pratt Hospital' as the future title of said corporation. While I do not wish to alter the operations and managements in the working of the said asylum, as now existing and being carried on, it is my wish and will, that the income, from my said residuary estate, shall be used to complete the present buildings and grounds and for the erection of such other buildings or building, as will accommodate not less than two hundred additional inmates, and after that the income from my aforegoing donation, shall be devoted mainly, to the cure of the indigent insane, in the most advisably manner, at very low charges, or absolutely free, as the trustees of said corporation, in the exercise of their best judgment, as to the rates to be charged, may be best and wisest to promote the object of this donation, provided however, and it is expressly my will, that in case the Trustees of the Sheppard Asylum, fail to obtain from the General Assembly of Maryland, at its first session after my death,

the amend-ent to the charter of said institution hereinbefore stipulated and provided for, and fail to adapt the name of the said corporation of the Trustees of the Sheppard and Enoch Pratt Hospital, then and in that case this is my will, and I then, give, devise and bequeath, in lieu of the aforegoing provision, the said residue of my estate, to my (*my*) niece, Ellen, J. O. Phinney, and to my nephews, Gerard C. Tobey, Horace P. Tobey, I. Lowell Pratt, David G. Pratt, Edmund T. Pratt and Moreland L. Pratt, to be in that case set apart for and equally divided among them the issue and issue *per stirpes* of any of them, who may be dead at the time of my decease, such issues to take the share to which its — or parent would if living have been entitled. I direct my executors until it shall have been decided, as above provided, whether the said condition, of my aforegoing devise and bequest of said residue will be performed—that is to say:—Whether the said corporation will obtain authority as aforesaid, to change its title, and will, in fact, adopt the title above designated, to keep all buildings and improvements on my property insured and in good order and condition and pay all charges and taxes thereon, and to collect the rents and income on said residue of my estate and to invest the said net income in Baltimore City stock, the same to be added to and constitute a part of the said residuary estate," as will appear more fully from the extract from the said will of said Enoch Pratt, herewith filed as part hereof, and marked "Plaintiff's Exhibit D."

6. That your *order*, in the performance of the condition of the aforesaid devise and bequest, did obtain from the General Assembly of the State of Maryland, at its present January session, 1898, which is the first session held by the said General Assembly of Maryland, after the death of the said Enoch Pratt, an amendment to its charter authorizing the change of title, and adopting the name as suggested in said will, of the Trustees of the Sheppard and Enoch
6 Pratt Hospital as the future title of the said corporation; all of which will more fully appear from the act of the General Assembly aforesaid, approved March 2d, 1898, and known *in* chapter 17 of the Acts of 1898, of which a duly certified copy is herewith filed and marked "Plaintiff's Exhibit E," which is prayed may be taken as a part of this bill of complaint.

7. That subsequently, to the approval of the said act of the General Assembly by the governor of Maryland, that is to say, on the 3d day of March, 1898, the board of trustees of the said Sheppard asylum duly met and adopted a resolution, accepting the said amendment to the charter of said corporation, and adopted the name "the Trustees of the Sheppard and Enoch Pratt Hospital," for said corporation; of which resolution a copy is herewith filed as part hereof, marked "Plaintiff's Exhibit F."

8. That under the terms of the said residuary clauses, — the said will of Enoch Pratt, as aforesaid, the executors hereinbefore named were directed to collect the rents and income on said residue of his estate, and to invest the net income, after paying for insurance and repairs, in Baltimore City stock, the same to be added to and constitute a part of the said residuary estate; and your orator is informed

and believes, that there has been received a considerable sum of money on this account, not yet appearing in the accounts filed and passed by the orphans' court of Baltimore city as hereinbefore referred to, but that the collateral inheritance tax has been paid upon the estimated residue of the said estate, which whole residuary estate, real and personal, your orator is informed and believes amounts to about $1,250,000.

9. That your orator, after complying literally with the condition specified in the will of Enoch Pratt aforesaid, and having adopted the name, "the Trustees of the Sheppard and Enoch Pratt Hospital," and thus at once entitled to receive from the said executors all the residue of the estate of the said Enoch Pratt, formally furnished the said executors with a certified copy of the said act of assembly passed in compliance with the condition coupled with the said residuary clause in the will of Enoch Prott aforesaid, and demanded the transfer, setting over and conveyance of the said residue of the said estate, but the said executors have, hitherto, neglected and omitted to comply with its reasonable request as aforesaid, setting up doubts as to their security in so transferring to this corporation the residue of the said estate, although the only condition required of the said corporation before it could demand the said residuary estate, has been complied with, and there is no one in any way entitled to make claim thereto, except your orator.

To the end therefore—

1. That the said James A. Gary and Arnold S. Hyde, executors as aforesaid, of the will of Enoch Pratt, deceased, may account under the decree of this court for all of the residue of the said estate of Enoch Pratt, deceased, which has, or may come into their
7 hands, and particularly all the rents and property thereof, and may account for any investment they have made or securities received, if any, and may pay, set over, transfer and convey by proper deeds, assignments and transfers all of the residue of the estate of said Enoch Pratt to the plaintiff under the terms of the said last will and testament of the said Enoch Pratt, deceased.

2. That your orator may have such other and further relief as its case may require, and to the end that the said executors, James A. Gary and Arnold S. Hyde, may — full, true and perfect answer to all and singular the allegations of this bill of complaint.

May it please your honor- to grant unto your orator the writ of subpœna directed to the said James A. Gary and Arnold S. Hyde, residing in the city of Baltimore, commanding them to be and appear in this court at some certain day to be named therein, and answer the premises and abide by and perform such decree as may be passed therein.

And your orator will ever pray, &c.

WM. PINKNEY WHYTE,
WILLIS & HOMER,
Solicitors for Plaintiff.

STATE OF MARYLAND, *City of Baltimore*, } *sct:*

I hereby certify that on this seventh day of March, 1898, before me, the subscriber, a justice of the peace of the State of Maryland, in and for the said city, personally appeared Joseph Grape, the secretary of The Trustees of the Sheppard and Enoch Pratt Hospital, the plaintiff in the above-entitled cause, and made oath in due form of law that the matters and facts stated in the aforegoing bill of complaint are true to the best of his knowledge, information and belief.

WM. MERRIKEN, *J. P.*

PLAINTIFF'S EXHIBIT A.

(Filed with bill of complaint.)

An act to incorporate the Trustees of the Sheppard Asylum.

SECTION 1. Be it enacted by the General Assembly of Maryland, That Moses Sheppard, David M. Perine, Doctor Wm. Riley, Archibald Stirling, Chas. Howard, Wm. M. Metcalf and Richard H. Townsend, be and they are hereby incorporated and made and constituted a body politic and corporate by the name and style of "the Trustees of the Sheppard Asylum," and by that name, style
8 and title shall have continued succession, and shall be able and capable in law to acquire property, real, personal and mixed, by gift, devise or purchase, and to hold, sell and dispose of and convey the same, and to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in any court of law or equity, or other place whatsoever, and to have and use a common seal, and the same to break, alter and renew at pleasure, and to receive and make all deeds, transfers, contracts, covenants, conveyances and grants whatsoever, and generally to do every other act and thing necessary to carry into effect the provisions of this act, and to promote the object and design of said corporation.

SECTION 2. And be it enacted, That the object and design of the corporation is hereby declared to be the founding and maintaining an asylum for the insane, the entire management of which shall be vested in the said trustees.

SECTION 3. And be it enacted, That a majority of trustees shall have power from time to time, to enact and make by-laws and rules and regulations for the management and government of the said asylum and the persons residing therein, whether as officers, servants or patients, the same not being inconsistent with the public laws of this State or with this act; they shall also have the power to remove any one of their own number who, in the opinion of the majority of said trustees, may be negligent of his duty, or otherwise conducts himself improperly, to fill all vacancies occasioned by such removals or otherwise, to elect annually a president and secretary, who shall perform the duties usually incumbrent on such

officers and according to such rules and by-laws as may be prescribed by said trustees, and to remove them at pleasure; to appoint and employ all such officers and servants as they deemed necessary or proper; to dismiss them at their pleasure; to fix and prescribe their duties and compensation, and generally to exercise all the powers conferred on said corporation by this act, for the purposes indicated in the second section.

SECTION 4. And be it enacted, That the number of trustees shall be not less than five or more than seven; and if at any time, they shall be reduced to four acting trustees, by death, resignation, removal out of the city or county in which the said ins-tution may be located, established under the provisions of this act, or otherwise, it shall be the duty of the remaining trustees to fill each vacancy within sixty days after its occurrence, and if they do not fill such vacancy within said period, it shall be the duty of the president, under penalty of a fine of five hundred dollars to the State, to notify the gove-nor of this State of the fact of such vacancy; and thereupon it shall be the duty of the governor, forthwith, by writing under his hand, to appoint some person to fill every such vacancy or vacancies as often as they may occur in manner aforesaid; and unless the trustees have filled such vacancy, before they or any of them shall have been notified of the appointment made by the governor, in manner aforesaid, the person so appointed, shall be and become one of the trustees, to all intent- and purposes.

9 SECTION 5. And be it enacted, That it shall be the duty of the trustees, on the first Monday in January, in each and every year, to exhibit to the governor of the State, to be filed in the archives of the executive department a full report in writing, of their proceedings during the year, and of the state of the asylum, showing the number and condition of the inmates, and all matters necessary to the full understanding of the affairs and situation of the corporation, which shall be certified by the oaths or affirmations of the president and secretary, and of at least one of the trustees. It shall be accompanied by an account or statement, certified by the oath or affirmation of the president, showing the receipts and expenditures for the year, and the assets and pecuniary condition of the corporation. It shall be the duty of the governor to cause copies of these papers to be laid before the General Assembly at its then or next session after the receipt of the same.

SECTION 6. And be it enacted, That the records, books, accounts, papers, grounds and buildings of the said corporation, shall at all times be open to the inspection and examination of the governor of the State, and to such inspection and examination as the General Assembly of Maryland or any court of justice, may at any time direct; and that the General Assembly shall always have power by resolution or otherwise, to appoint committees of their b ody, or other persons, to enquire into the affairs of the said corporation, who shall have authority to examine on oath or affirmation, the trustees, officers and servants of the corporation, and any other persons, touching the affairs of the same.

SECTION 7. And be it enacted, That it shall at all times be lawful

for the General Assembly or the governor of the State to cause proceedings to be instituted, by way of bill, in the name of the State having original jurisdiction for the removal of any trustee, or trustees, who may be guilty of fraud, embezzlement, or misapplication of the funds of the corporation; and such trustee or trustees may after due investigation be removed by such court, and another or others appointed by the same in his or their stead; and if it shall happen that all the trustees shall at any time be so removed, the charter of the corporation shall not be forfeited, but a new set of trustees shall be appointed by the court; and all persons appointed trustees under the provisions of this section shall be trustees to all intents and purposes.

SECTION 8. And be it enacted, That the costs of any proceedings under the last section, shall be defrayed by the trustees against whom the same shall be instituted, if they shall be removed, otherwise they shall be defrayed by the corporation, unless the court shall order them to be paid by any person or persons at whose instigation the General Assembly or the governor may have ordered the proceedings, and if the General Assembly or the governor shall think fit, they or he may direct the name or names of the person or persons instigating the proceedings, to be entered on the record of the court as relators.

SECTION 9. And be it enacted, That this act shall continue in force until repealed by the General Assembly, and the General Assembly may at any time alter or amend this act; and it shall be in force from the day of its passage.

Passed by the General Assembly of Maryland at its January session, 1853.

PLAINTIFF'S EXHIBIT B.

(Filed with bill of complaint.)

An amendment to the charter passed January, 1886.

CHAPTER 9.

"An act to repeal section four (4) of the act passed at the January session, eighteen hundred and fifty-three (1853), of the General Assembly of Maryland, chapter 274, entitled An act to incorporate the Trustees of the Sheppard Asylum, and to re-enact the same with amendments."

SECTION 1. Be it enacted by the General Assembly of Maryland, That section (4) of the act passed at the January session, 1853, of the General Assembly of Maryland, chapter 274, entitled "An act to incorporate the Trustees of the Sheppard Asylum," be and the same is hereby repealed, amended and re-enacted to read as follows:

SECTION 4. Be it enacted by the General Assembly of Maryland, That the number of trustees shall not be less than five nor more than seven; and if, at any time, they shall be reduced to four acting trustees, by death, resignation or otherwise, it shall be the duty of

the remaining trustees to fill each vacancy within sixty days after its occurrence; and if they do not fill such vacancy within said period, it shall be the duty of the president, under penalty of a fine of five hundred dollars, to the State, to notify the governor of this State of the fact of such vacancy; and thereupon, it shall be the duty of the governor forthwith, by writing, under his hand, to appoint some person to fill every vacancy or vacancies as often as they may occur in manner aforesaid; and unless the trustees shall have filled such vacancy before they or any of them shall have been notified of the appointment made by the governor in manner aforesaid, the person so appointed shall be and become one of the trustees to all intents and purposes; and any resident of the State of Maryland may be eligible to appointment as a trustee of the said corporation.

SECTION 2. And be it enacted, That this act shall take effect from the date of its passage.

Approved March 10, 1886.

HENRY LLOYD, *Gov.*

11 PLAINTIFF'S EXHIBIT C.

(Filed with bill of complaint.)

STATE OF MARYLAND, } *sc:*
Baltimore City, }

The subscriber, register of wills for Baltimore city, doth hereby certify that it appears by the records in his office, that letters of administration of all the goods, chattels, credits and personal estate of Enoch Prat', deceased, was on the 23d day of September, in the year of our Lord one thousand eight hundred and ninety-six, granted and committed unto James A. Gary and Arnold S. Hyde, the executors by the last will and testament of the said deceased appointed.

In testimony whereof, I hereto subscribe my name and
[L. S.] affix the seal of my office, this 7th day of March, in the year of our Lord eighteen hundred and ninety-eight.

Test: STEPHEN R. MASON,
Register of Wills for Baltimore City.

PLAINTIFF'S EXHIBIT D.

(Filed with bill of complaint.)

Full Text of the Conditions Imposed by Mr. Pratt on Sheppard Asylum, Trustees.

The following is the full text of the residuary clause of the will:

"Having in my lifetime liberally provided for my niece and nephews hereunder named, I do now hereby give devise and bequeath all the rest, residue and remainder of my estate of every kind and description, whether real, personal or mixed, and wheresoever

the same may be situate of which I may die possessed or be in any way entitled to at the time of my death, after the payment of all debts justly due by me, and after satisfying all the devises and bequests hereinbefore set forth to the Trustees of the Sheppard Asylum, a corporation duly incorporated by the General Assembly of the State of Maryland by said name, style and title, and its successors forever, it being my intention and meaning to make said corporation the Trustees of the Sheppard Asylum, the residuary legatee and devisee under this my last will and testament.

"And I direct my executors to set over, transfer and convey by proper deeds, assignments and transfers the said residue of my estate to the said corporation, upon and subject, however, to the following conditions and bargain namely:

12 "That the said trustees shall adopt as the name and style of said corporation the title of 'the Trustees of the Sheppard and Enoch Pratt Hospital' and shall obtain at the first session of the General Assembly of Maryland after my death, an amendment to their charter authorizing the said change of title and adopting the said name of the 'Trustees of the Sheppard and Enoch Pratt Hospital' as the future title of said corporation:

"While I do not wish to alter the operations and management in the working of the said asylum as now existing and being carried on, it is my wish and will that the income from my said residuary estate shall be used to complete the present buildings and grounds and for the erection of such other buildings or building as will accommodate not less than two hundred additional inmates, and after that the income from my aforegoing donation shall be devoted mainly to the care of the indigent insane in the most advisable manner at *very low charges* or absolutely *free*, as the trustees of said corporation in the exercise of their best judgment as to the rate to be charged may deem best and wisest to promote the object of this donation.

"Provided however and it is expressly my will, that in case the said Trustees of the Sheppard Asylum fail to obtain from the General Assembly of Maryland at its first session after my death the amendment to the charter of said institution hereinbefore stipulated and provided for, and fail to adopt the name for said corporation of the 'Trustees of the Sheppard and Enoch Pratt Hospital' then and — that case it is my will and I then give, devise and bequeath, in lieu of the aforegoing provision, the said residue of my estate to my niece, Ellen J. O'Phinney, and to my nephews, Gerard C. Tobey, Horace P. Tobey, J. Lowell Pratt, David G. Pratt, Edmund T. Pratt and Morland L. Pratt, to be in that case set apart for and equally divided among them and the issue *per stirpes*, of any of them who may be dead at the time of my decease, such issue to take the share to which its or their parent would, if living, have been entitled.

"I direct my executors, until it shall have been decided as above provided, whether the said condition of my aforegoing devise and bequest of said residue will be performed that is to say, whether the said corporation will obtain authority as aforesaid to change its title, and will in fact adopt the title above designated — to keep

all buildings and improvements on my property insured and in good order and condition, and pay all charges and taxes thereon, and to collect the rents and income of said residue of my estate, and to invest the said net income in Baltimore City stock, the same to be added to and constitute a part of the said residuary estate."

13 STATE OF MARYLAND, *Baltimore City,* } *ss:*

I, Stephen R. Mason, register of wills, and by law keeper of the seal and of the records and of the original papers of the orphans' court for Baltimore city, do hereby certify that the aforegoing is a full and true copy of the rest and residue clause of the last will and testament of Enoch Pratt, late of said city, deceased, taken from Wills, Liber T. W. M., No. 76, folio 539, &c., being one of the records kept in the office of the register of wills for Baltimore city.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court and office, this 7th day of March, in [L. S.] the year of our Lord eighteen hundred and ninety-eight.

STEPHEN R. MASON,
Register of Wills for Baltimore City.

PLAINTIFF'S EXHIBIT E.

(Filed with bill of complaint.)

1898, CHAPTER 17.

An act to change the name of the Trustees of the Sheppard Asylum, incorporated by the General Assembly of Maryland by the act of 1853, chapter 274, as amended by the act of 1886, chapter 9.

Whereas, the General Assembly of Maryland by chapter 274, of the acts passed at its January session 1853, created a corporation under the name of "the Trustees of the Sheppard Asylum," which act, by its second section, provided: "That the object and design of the said corporation is hereby declared to be the founding and maintaining an asylum for the insane, the entire management of which shall be vested in the said trustees."

And whereas, during the six years of the operation of the institution, which was opened for the reception of patients in 1891, the value of this asylum to the State has been fully demonstrated; and

Whereas, the late Enoch Pratt having manifested great interest in the successful management of the institution by the trustees, with their limited resources, and with a desire to broaden its usefulness, after providing for his relatives, dedicated the residue of his fortune to the same corporation for the same work under the administration of the said trustees without other restriction of limitation than that his name should be associated with that of Moses Sheppard.

Now, for the purpose of carrying out the suggestion contained in

the will of the said Enoch Pratt, that an amendment to the
14 charter of the said corporation should be obtained from the General Assembly of Maryland, at the present session, authorizing the change of its title and adopting the name of "the Trustees of the Sheppard and Enoch Pratt Hospital" as the future title of the said corporation, and of securing for the people of Maryland the benefit of a large addition to the present buildings and increased facilities for the care of additional inmates which will accrue to the said corporation as the residuary legatee and devisee under said will of Enoch Pratt; therefore,

SECTION 1. Be it enacted by the General Assembly of Maryland, that the name of "the Trustees of the Sheppard Asylum," incorporated by the General Assemby of Maryland, by chapter 274, of the acts passed at its January session of 1853, as amended by chapter 9, of the acts passed at the January *issue* of 1886, be and the same is hereby changed to "the Trustees of the Sheppard and Enoch Pratt Hospital," which is hereby fixed and established as the corporate name of the said corporation; which said corporation by the said name of "the Trustees of the Sheppard and Enoch Pratt Hospital" shall have and hold all the property, enjoy all the rights, and exercise all the powers and functions which were heretofore possessed by or conferred upon the said corporation under and by its former name of "the Trustees of the Sheppard Asylum," and shall hold in like manner all property and estate which it shall acquire by will or otherwise under the said change of title hereby made.

SEC. 2. And be it enacted, That this act shall take effect from the date of its passage.

Approved March 2d, 1898.

[The Great Seal of Maryland.]

LLOYD LOWNDES, *Governor.*
J. WIRT RANDALL,
President of the Senate.
LOUIS SCHAEFER,
Speaker of the House of Delegates.

STATE OF MARYLAND, *sct:*

I, Allan Rutherford, clerk of the court of appeals of Maryland, do hereby certify that the aforegoing is a full and true copy of the act of the General Assembly of Maryland, of which it purports to be a copy, as taken from the original laws belonging to and deposited in the office of the clerk of the court of appeals aforesaid.

In testimony whereof I have hereunto set my hand as
[L. S.] clerk and affixed the seal of the said court of appeals this 3d day of March, eighteen hundred and ninety-eight.

ALLAN RUTHERFORD,
Clerk Court of Appeals of Maryland.

15 PLAINTIFF'S EXHIBIT F.

(Filed with bill of complaint.)

The Trustees of the Sheppard Asylum, room 32, Chamber of Commerce building.

BALTIMORE, *March 3d*, 1898.

At a meeting of the "Trustees of the Sheppard Asylum" held the 3d day of March, A. D., 1898, at which were present the following-named trustees: Geo. A. Pope, president; Gerard T. Hopkins, J. Olney Norris, Dr. Chas. H. Riley, C. C. Horner and Geo. M. Lamb, the following resolution was unanimously passed by yea and nay vote, viz:

"Resolved by the 'Trustees of the Sheppard Asylum' in meeting assembled, That the amendment to the charter of said corporation (the 'Trustees of the Sheppard Asylum,' Acts of 1853, c. 274) changing the name of the corporation from the 'Trustees of the Sheppard Asylum,' to 'the Trustees of the Sheppard and Enoch Pratt Hospital,' passed by the General Assembly of Maryland at its present January session, 1898, approved on the 2d day of March, 1898, be and the same is hereby accepted; and the name 'the Trustees of the Sheppard and Enoch Pratt Hospital' for said corporation be and the same is hereby adopted."

I hereby certify that the aforegoing is a true copy of a resolution unanimously passed by the Trustees of the Sheppard Asylum, at a meeting held on the third day of March, 1898.

JOSEPH GRAPE, *Secretary.*

Subpœna issued and returned, summoned *ambo.*

Certified Copy of the Last Will and Testament and Codicil of Enoch Pratt, Deceased, Referred to in the Bill of Complaint, to be Hereafter Filed.

(Filed 8th March, 1898.)

Enoch Pratt's last will and testament.

I, Enoch Pratt of the city of Baltimore, and State of Maryland, to make, publish and declare my last will and testament, as follows, hereby revoking all wills by me heretofore made.

First. I devise and bequeath my house and lot and vacant lot in the city of Baltimore fronting about one hundred feet on Monument street at its intersection with the west side of Park avenue with a depth of about one hundred and twenty-five feet, together with the policy of insurance thereon, to my dear wife Maria Louise Pratt for and during the term of her natural life. After the
16 death of my wife, I direct and it is my will that the above-mentioned property so devised to her for life shall become a portion of the rest and residue of my estate and shall pass and be

subject to the provisions hereinafter set forth with reference to the residue of my estate.

Second. I give and bequeath to my said wife the sum of four hundred thousand ($400,000) dollars for her absolute use and benefit; for the payment of which I request my executors to set over convey and transfer to her absolutely United States bonds or stocks and Baltimore City stocks belonging to me, or any other funds or property of my estate, in the discretion of my executors to the amount of four hundred thousand dollars a- their par value. Also I give and bequeath to my said wife absolutely, all my household goods and personal effects in or about my said dwelling-house and my horses, carriages, harness, &c. But the two marble statues, "Shepherd Boy" and "Campaspe" by Bartholomew, I bequeath to my wife for life, and after her death to the Peabody Institute of the city of Baltimore.

Third. I direct my executors to deposit one hundred thousand ($100,000) dollars of Baltimore City stock in the Safe Deposit and Trust Company of Baltimore, in trust to pay over the income thereof to my wife during her life to help pay the taxes repairs and expenses on my dwelling-house above mentioned or for any other purpose she may desire, and from and after her death, I give and bequeath the principal of said one hundred thousand ($100,000) dollars of said stock to the Meadville Theological School (a corporation) located at Meadville, Pennsylvania for the uses and purposes of said theological school, to be held or sold at its discretion.

Fourth. The foregoing provisions in favor of my wife are to be in lieu of and in full for all claim on her part for dower or thirds, in or upon my estate real and personal.

Fifth. I give and bequeath to Enoch Pratt Spear, Enoch Pratt Callow, Enoch Pratt Hyde, Harry Pratt Janes, Enoch Pratt McCollough, Enoch Pratt Heineken of Prince William county Virginia, Enoch Pratt Fearing of Elizabeth City North Carolina, Enoch Pratt Niegal and Enoch Pratt Davison, and to my clerks, Henry Seim and Bernard A. Rim if respectively living at my death each the sum of one thousand dollars.

Sixth. I devise and bequeath to Henry Janes his heirs and assigns absolutely, my one-half interest in my Locust Point and Fort Covington wharf property (which I hold in common with the estate of William Callow, deceased).

Seventh. I give and bequeath the sum of twelve thousand ($12,000) dollars to be by my executors equally divided among the cashier, inside watchmen and clerks of the National Farmers' and Planters' Bank of Baltimore, who are now in its service at the time of my death.

Eighth. I devise and bequeath to my colored servant man Stephen Harris, his heirs and assigns, the house and lot he occupies
17 in Tyson street, if he is living at my death and to my other colored servants namely John Davis the sum of five hundred dollars and to Margaret Joyce the sum of three hundred dollars and

to Emily Boston the sum of two hundred dollars if respectively living with me at the time of my death.

Ninth. I give and bequeath to David G. Pratt and Gerard C. Foley and the survivor of them as trustees the sum of fifteen thousand ($15,000) dollars with the request that they transfer five thousand ($5,000) dollars thereof to the Congregational church and society Titcut parish North Middleborough Massachusetts (where I was born 10th September, A. D. 1808) and that they transfer the sum of ten thousand ($10,000) — thereof to the town of Middleborough, Massachusetts, a body politic under the laws of said State; said sum to be invested by said town and the income thereof to be annually paid by it, for the support of the public library of said town.

Tenth. I give and bequeath to the Boys' Home Society of Baltimore (a corporation incorporated by the State of Maryland) the sum of ten thousand dollars.

Eleventh. I hereby direct that all the devises and bequests hereinbefore set forth in this my will, shall pass and be paid in full to the respective beneficiaries thereof, free of collateral inheritance tax.

Twelfth. Having in my lifetime liberally provided for my niece and nephew hereunder named, I do now hereby give devise and bequeath all the rest and residue and remainder of my estate *and* every kind and description, whether real personal or mixed and wherever the same may be situate of which I may die possessed, or be in any way entitled to at the time of my death, after the payment of all debts, justly due by me and after satisfying all the devises and bequests hereinbefore set forth to the "Trustees of the Sheppard Asylum" a corporation already incorporated by the General Assembly of the State of Maryland, by said name, style and title and its successors forever; it being my intention and meaning to make said corporation the "Trustees of the Sheppard Asylum" the residuary legatee and devisee of and under this my last will and testament. And I direct my executors to set over, transfer and convey by proper deeds, assignments and transfers the said residue of my estate to the said corporation upon and subject however to the following conditions and bargain, namely, that the said trustees shall adopt as the name and style of said corporation the title of the "Trustees of the Sheppard and Enoch Pratt Hospital," and shall obtain at the first session of the General Assembly of Maryland after my death an amendment to their charter authorizing the said change of title and adopting the said name of the "Trustees of the Sheppard and Enoch Pratt Hospital" as the future title of said corporation.

While I do not wish to alter the operations and management or the working of the said asylum as now existing and being carried on, it is my wish and will that the income from my said residuary estate shall be used to complete the present buildings and
18 grounds, and for the erection of such other building or buildings, as will accommodate not less than two hundred additional inmates and after that, the income from my aforegoing donations shall be devoted mainly to the care of the indigent insane in

the most advisable manner at *very low charges* or absolutely *free* as the trustees of said corporation, in the exercise of their best judgment as to the rate to be charged may deem best and wisest to promote the object of this donation. Provided however, and it is expressly my will that in case the said Trustees of the Sheppard Asylum fail to obtain from the General Assembly of Maryland, at its first session after my death, the amendment to the charter of said institution hereinbefore stipulated and provided for and fail to adopt the name for said corporation of the "Trustees of the Sheppard and Enoch Pratt Hospital" then and in that case it is my will and I then give devise and bequeath (in lieu of the aforegoing provision) the said residue of my estate to my niece Ellen J. O'Phinney and to my nephew Gerard C. Tobey, Horace Tobey, I. Lowell Pratt, David G. Pratt, Edmund T. Pratt and Mortland L. Pratt to be in that case set apart for and equally divided among them and the issue *per stirpes* of any of them who may be dead at the time of my decease such issue to take the share to which its or their parent would if living been entitled.

I direct my executors until it shall have been decided as above, provided, whether the said condition of my aforegoing devise and bequest of said residue will be performed, that is to say whether the said corporation will obtain authority as aforesaid to change its title, and will, in fact, adopt the title above designated to keep all buildings and improvements on my property insured and in good order and condition and pay all charges and taxes thereon and collect the rents and income on said residue of my estate, and to invest the said net income in Baltimore City stock, the same to be added to and constitute a part of the said residuary estate.

Thirteenth. I do hereby appoint my wife, Maria Louisa Pratt, and my friends, Henry Janes and James A. Gary, and the survivors and survivor of them to be the executors of this my last will and testament; and it is expressly my will that none of those named who shall act as my executors shall be required to give bond for the performance of their duties as executors.

And I hereby direct and provide that the said executors shall be charged and be charg-able only with such sums of money as they shall respectively actually receive by virtue of the duties, by this my will or by law committed to or imposed on them, notwithstanding their joining in any receipt or otherwise act for the sake of conformity only, and that they shall not be answerable for any person or body corporate with whom or with which the said trust property or moneys of the estate or any part thereof shall be placed for safe keeping, or otherwise, nor for the insufficiency of any security upon which the same shall be invested, nor for the loss, misfortune or damage which may happen in execution of the aforesaid
19 duties, or any of them, or in relation thereto, unless the same shall happen by or through his or their wilful default.

I hereby give the executors above named who shall act, full power to sell and dispose of at public or private sale for cash, or credit, without any order of court, any part of my estate and property, real and personal (except such parts as are herein specifically de-

vised and bequeathed), for the purpose of carrying out the objects and purposes of this my will or for the purpose of dividing my estate, or for paying the aforegoing legacies (which I hereby declare it is my will shall be paid as well out of the proceeds of my real estate as out of my personal estate.)

In case of any sale under any of the powers herein conferred upon my executors, and the acting one or more of them, it is my will that the property so sold, or the purchasers thereof, shall not be responsible or bound for the application of the purchase-money. The powers herein conferred may be exercised by the acting one, or more of my executors or the survivor.

In witness whereof, I have hereunto subscribed my name and affixed my seal on this second day of October, A. D. (1893) eighteen hundred and ninety-three.

ENOCH PRATT. [SEAL.]

Signed, sealed, published and declared by Enoch Pratt, the within-named testator, as and for his last will and testament, in the presence of us, who, at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as witness-.

SKIPWITH WILMER.
JOHN PLEASANTS.
JOHN A. WHITRIDGE.

BALTIMORE CITY, *ss:*

On the 23d day of September, 1896, came Skipwith Wilmer and John Pleasants, two of the subscribing witnesses to the aforegoing last will and testament of Enoch Pratt, late of said city, deceased, and made oath on the Holy Evangely of Almighty God, that they did see the testator sign and seal this will; that they heard him publish, pronounce and declare the same to be his last will and testament; that at the time of his so doing he was, to the best of their apprehension, of sound and disposing mind, memory and understanding; and they together with John A. Whitridge, the other subscribing witness thereto, subscribe their names as witnesses to this will, in his presence, at his request and in the presence of each other.

Sworn to in open court.

Test:

THOS. W. MORSE,
Register of Wills for Baltimore City.

BALTIMORE CITY, *ss:*

On the 23d day of September, 1896, came Skipwith Wilmer and made oath on the Holy Evangely of Almighty God, that he was well acquainted with John A. Whitridge one of the subscribing witnesses to the attestation clause of the last will and testament of Enoch Pratt, late of said city deceased, and familiar with his handwriting and verily believes the signature of John A. Whitridge as so written

is the true and genuine signature of the said John A. Whitridge now beyond the jurisdiction of court.

Sworn to before the court.

THOS. W. MORSE,
Register of Wills for Baltimore City.

Codicil.

I, Enoch Pratt, of the city of Baltimore do hereby make and publish this codicil to my last will and testament (which will is dated on the second day of October, 1893), as follows:

First. My friend Henry James having died, I hereby revoke — annul the 6th clause of my said will, as the property named in said clause will not pay its maintenance in other hands than those of James.

Second. I hereby appoint Arnold S. Hyde to be the executor of my said will in place of Henry James, and I direct that no bond shall be required from him as such executor. The said Hyde to act with my other executors and the survivor of them, and to have all the rights, powers and duties originally conferred or imposed on said James in said will.

Third. In all other respects, except as modified by this codicil, I desire my said will to stand as originally written.

In witness whereof, I hereunto subscribe my name and affix my seal on this fifteenth day of March, eighteen hundred and ninety-four.

ENOCH PRATT. [SEAL.]

21 Signed, sealed, published and declared by Enoch Pratt the above-named testator, as a codicil to his last will and testament in the presence of us, who at his request, in his presence and in the presence of each other, have hereunto subscribed our names as witnesses.

SKIPWITH WILMER.
JOHN A. WHITRIDGE.

BALTIMORE CITY, *ss:*

On the 23d day of September, 1896, came James A. Gary and made oath on the Holy Evangely of Almighty God, that he doth not know of any will or codicil of Enoch Pratt, late of said city, deceased, other than the above instrument of writing, and that he found this will and codicil in the vault of the safe deposit company, subsequent to testator's death and retained the custody of the will and codicil until filed in court; and that the testator departed this life on the 17th day of September, 1896.

Sworn to before the subscriber—

THOS. W. MORSE,
Register of Wills for Baltimore City.

BALTIMORE CITY, *ss:*

On the 23d day of September, 1896, came Skipwith Wilmer one of the subscribing witnesses to the aforegoing codicil to the last will

and testament of Enoch Pratt, late of said city, deceased, and made oath on the Holy Evangely of Almighty God, that he did see the testator sign and seal this codicil; that he heard him publish, pronounce and declare the same to be a codicil to his last will and testament; that at the time of his so doing he was, to the best of his apprehension, of sound mind, memory and understanding; and that he together with John A. Whitridge the other subscribing witness thereto subscribed their names as witnesses to this codicil in his presence, at his request, and in the presence of each other.

Sworn to before the subscriber—

THOS. W. MORSE,
Register of Wills for Baltimore City.

BALTIMORE CITY, *ss:*

On the 23d day of September, 1896, came Skipwith Wilmer, and made oath on the Holy Evangely of Almighty God, that he
22 is well acquainted with John A. Whitridge, one of the subscribing witnesses to the attestation clause of the codicil to the last will and testament of Enoch Pratt, late of said city, deceased, and familiar with his handwriting, and verily believes that the signature of said John A. Whitridge, as so written is a true and genuine signature of said John A. Whitridge, now beyond the jurisdiction of the court.

Sworn to before the court.

Test: THOS. W. MORSE,
Register of Wills for Baltimore City.

—, the undersigned, Maria Louisa Pratt, appointed executrix in the last will and testament of Enoch Pratt, late of Baltimore city, deceased, do hereby refuse to act as executrix of said will, and do therefore renounce all my right to letters testamentary upon the deceased's estate, and all right, title and claim that I may, or could have had, by virtue of said appointment.

In testimony whereof I hereunto subscribe my name, this 23d day of Sept., 1896.

MARIA LOUISA PRATT.

Witness:
HENRY P. JANES.

Received to be recorded on the 23d day of September, 1896; same day filed and recorded in Wills, Liber T. W. M. No. 76, folio 537, &c., and examined.

Test: THOS. W. MORSE,
Register of Wills for Baltimore City.

STATE OF MARYLAND, *Baltimore City,* } *ss:*

I, Stephen R. Mason, register of wills, and by law keeper of the seal and of the records, and of the original papers of the orphans' court for Baltimore city, do hereby certify that the aforegoing is a true and full copy of the last will and testament and codicil of

Enoch Pratt, late of said city, deceased, together with the proofs and probates thereof, also the renunciation of Maria Louisa Pratt, taken from Wills, Liber T. W. M., No. 76, folio 537, &c., being one of the records kept in the office of the register of wills for Baltimore city.

In testimony whereof I hereunto subscribe my name and
[L. S.] affix the seal of said court, this 7th day of March, in the year of our Lord eighteen hundred and ninety-eight.

STEPHEN R. MASON,
Register of Wills for Baltimore City.

23 *Defendants' Answer.*

(Filed 22d March, 1898.)

THE TRUSTEES OF THE SHEPPARD and Enoch Pratt Hospital
vs.
JAMES A. GARY and ARNOLD S. Hyde, Executors of Enoch Pratt.
} In the Circuit Court No. 2 of Baltimore City.

The answer of James A. Gary and Arnold S. Hyde, executors of the will of Enoch Pratt, to the bill of complaint against them by the Trustees of the Sheppard and Enoch Pratt Hospital exhibited in this court.

To the honorable the judge of said court:

1. These defendants admit all the allegations of the first, second and third paragraphs of the said bill to be true.

2. They admit the matters alleged in the fourth paragraph, with the following qualifications: These defendants have paid all claims presented against their testator's estate, except one, amounting with interest to about fifteen hundred dollars, which was presented by one Edward L. Tunis, was disputed by these defendants, and is the subject of a suit now pending in the Baltimore city court.

3. They admit that the residuary clause of their testator's will is correctly set forth in the fifth paragraph of the said bill.

4. They believe the matters alleged in the sixth and seventh paragraphs to be true, but, for reasons hereinafter stated, they do not and cannot admit the same, but leave the plaintiff to make such proof thereof as it may be advised.

5. They admit the allegations of the eighth paragraph to be true, except that in their opinion the value of the total residuary estate, real and personal, is about twelve hundred thousand dollars, instead of twelve hundred and fifty thousand dollars, as stated in said paragraph.

6. They admit that the plaintiff did file with them a certified copy of an act of the General Assembly of Maryland, purporting to amend its charter as required by the said residuary clause of their testator's will, and demanded of these defendants the transfer and delivery to it of all the said property as alleged in the ninth para-

graph of the said bill, and that they refused to make such delivery and transfer because they were advised that they could not safely do so.

7. Further answering, these defendants show unto your honor, in justification of their said refusal, that for several months prior
24 to the said demand of the plaintiff, it was well known to these defendants that the persons named as alternative residuary devisees and legatees were vigorously opposing the passage by the General Assembly of said act amending the plaintiff's charter, on the ground that it was beyond the power of the legislature to authorize said amendment, and that such act, if passed, would be void and of no effect; and these defendants further show, that about the time the aforesaid demand was made upon them by the plaintiff, the said alternative residuary devisees and legatees also made a formal demand upon them for said property, claiming that the plaintiff herein had failed to perform the condition imposed by the said testator, and that said property belonged to them, the said alternative residuary devisees and legatees.

8. Further answering, these defendants show unto your honor, that within a few days after the institution of this suit, and when they were thus threatened with a similar proceeding on the part of the said alternative residuary devisees and legatees, these defendants filed in this court a bill of complaint, in the nature of a bill of interpleader (see docket A, 1898, folio 76, case No. 3676 A) against the plaintiff herein, and the alternative residuary devisees and legatees, and also the next of kin and heirs-at-law of their testator wherein they fully set forth the conflicting claims to be made upon them for the said property, and their inability to decide among the conflicting claimants, and prayed this court to assume jurisdiction of the further administration of the said estate, to require the said conflicting claimants to interplead and adjust their rights, and also to enjoin each and all of them from prosecuting or commencing any suit or action against these defendants in respect to the several matters aforesaid; and these defendants do, by reference, make the said bill so filed by them, a part of this answer, and pray that the same may be taken as part hereof, as if incorporated and fully set forth herein.

And having thus fully answered, these defendants pray that they may be hence dismissed with their costs.

JAMES A. GARY,
ARNOLD S. HYDE, *Executors*,
By BARTON & WILMER, *Att'ys.*

BARTON & WILMER,
Att'ys for Defendant.

And afterwards, to wit, on the 12th day of April, A. D. 1898, general replication was filed in said cause.

And afterwards, to wit, on the 13th day of April, A. D. 1898, petition of plaintiff for leave to take testimony and order of court thereon granting the same *was* filed in said cause.

25 *Depositions.*

(Filed 16th May, 1898.)

GEORGE A. POPE, produced on behalf of the plaintiff, sworn and examined, deposeth and saith as follows, that is to say:

1 Q. State your residence and occupation, and if you know the parties to this suit?

A. I reside at 926 St. Paul St.; I am president of the trustees of the plaintiff corporation; I know the other parties to this proceeding; the plaintiff is a duly incorporated body, originally chartered in 1853, which was amended in 1886, and again amended in 1898; the original title being that of the Trustees of the Sheppard Asylum of Baltimore County, and its present title, Trustees of the Sheppard and Enoch Pratt Hospital.

The papers marked "Exhibits A and B," which I now hold in my hand, and which was filed with the bill (and now filed in evidence with the examiner), contains true copies of the — General Assembly before referred to, that incorporating the Sheppard Asylum and Acts of 1853, chapter 274, and that amending the charter, Acts of 1886, chapter 9. The paper filed, marked "Exhibit D," (and now filed with the examiner), contains a true copy of the act of 1898, amending the charter also before referred to.

2 Q. Did you know Enoch Pratt in his lifetime; if so, when did he die?

A. I did; he died in September, 1896.

3 Q. Did he or not leave a last will and testament?

A. He did; a certified copy of his will I now file, marked "Plaintiffs' Exhibit Examiner E. P., No. 1;" under this will Mr. Pratt's wife, Henry Janes and James A. Gary were appointed executors; Mrs. Pratt renounced.

Letters testamentary were granted to James A. Gary and Arnold S. Hyde, as will appear by Exhibit C before filed in this case (and now filed in evidence with the examiner).

Mr. Gary and Mr. Hyde took possession of the estate and entered upon discharge of their duties as executors, and on the 27th day of March, passed their first account, a certified copy of which will be hereafter filed in evidence with the examiner, marked "Plaintiffs' Exhibit Examiner E. P., No. 2."

4 Q. Under the residuary clause of Mr. Pratt's said will the corporation of which you are president, was made legatee and distributee of that residuum, as appears from the will, subject to the change of the name of the corporation by authority of act of the General Assembly of Maryland; please state whether or not such an act was passed by the legislature of Maryland?

A. Yes; the legislature of 1898 passed an act authorizing
26 the change of the corporate name to conform with the provisions of Mr. Pratt's will; the act mentioned in Exhibit E, heretofore filed with the bill and now offered in evidence here, being a true copy of said act.

5 Q. After the passage of that act, was any action taken by the corporation in adopting the name authorized by that act; if so, what?

A. Yes; at a meeting of the Trustees of the Sheppard Asylum, held on the 3d of March, 1898, a resolution was unanimously adopted accepting the amendment, and adopting the change of name; the paper heretofore filed as Exhibit F (and now filed with the examiner), is a correct copy of said resolution certified to by the secretary of the board of trustees; after the adoption of that resolution by the trustees, a letter (a copy of which is now filed, marked "Plaintiffs' Exhibit Examiner G. A. P., No. 1,") was sent to the executors; on the 28th day of December, 1896, the Trustees of the Sheppard Asylum adopted a resolution accepting the trust under Mr. Pratt's will on the conditions named in the will, a copy of that resolution I now file, marked "Plaintiffs' Exhibit Examiner G. A. P., No. 2."

I also file in evidence a copy of a letter sent to Mr. Gary, as executor, of the trustees, under date of January 26th, 1897, informing the executors of the passage by the trustees of the said resolution, and also a copy of the reply of Mr. Gary thereto, under date of the 27th of January, 1897, marked respectively "Plaintiffs' Exhibit Examiner G. A. P., Nos. 3 and 4."

6 Q. Were the executors furnished with certified copy of the act of assembly changing the name of the corporation?

A. They were; but we have not received the estate from the executors up to this moment.

Cross-examination waived.

Question by the EXAMINER: Do you know or can you state any other matter or thing that may be of benefit or advantage to the parties to this suit or either of them; or that may be material to the subject of this your examination or the matters in question between the parties; if so, state the same fully and at large in your answer?

Ans. No.

GEO. A. POPE.

May 16th, 1898.—Plaintiff files in evidence certified copy first administration account of James A. Gary *et al.*, executors of last will and testament of Enoch Pratt, deceased, same marked "Plaintiffs' Exhibit Examiner E. P., No. 2."

No other witnesses being named or produced to me, I then at the request of the solicitors of the respective parties closed the depositions taken in said cause, and now return them closed under
27 my hand and seal on this 16th day of May, in the year eighteen hundred and ninety-eight, at the city of Baltimore, in the State of Maryland.

JAS. E. CARR, JR., *Examiner.* [SEAL.]

There are 12 exhibits with these depositions, to wit:

Plaintiffs' Exhibits A, B, C, D, E and F, before filed with bill of

complaint; and certified copy of the last will and testament of Enoch Pratt, heretofore filed; Plaintiffs' Exhibits Examiner G. A. P., Nos. 1, 2, 3, 4 and E. P. No. 2.

JAS. E. CARR, JR., *Examiner.*

PLAINTIFFS' EXHIBIT EXAMINER G. A. P. No. 1.

(Filed with depositions.)

Copy.

BALTIMORE, *March 3rd*, 1898.

To Messrs. Jas. A. Gary and Arnold S. Hyde, executors of the estate of the late Enoch Pratt.

DEAR SIRS: I beg to inform you that the Trustees of the Sheppard Asylum have complied with the conditions of Mr. Pratt's will in having the General Assembly at its present session amend the act of incorporation, changing the title of the corporation to "the Trustees of the Sheppard and Enoch Pratt Hospital," and are prepared to furnish you a certified copy of the act so amending the title. They are now ready to receive the estate from you.

Very respectfully yours, GEO. A. POPE, *President.*

PLAINTIFFS' EXHIBIT EXAMINER G. A. P. No. 2.

(Filed with depositions.)

"That the Trustees of the Sheppard Asylum agree to accept the bequest of the late Enoch Pratt on the conditions contained in his will."

I hereby certify that the above is a correct copy of a resolution adopted by the Trustees of the Sheppard Asylum at a meeting held December 28th, 1896.

JOSEPH GRAPE, *Secretary.*

28 PLAINTIFFS' EXHIBIT EXAMINER G. A. P. No. 3.

(Filed with depositions.)

Copy.

26 JANUARY, 1897.

Jas. A. Gary, executor.

DEAR SIR: Referring to our recent conversation I beg to inform you that at a meeting held on 28th December, 1896, the following resolution was adopted, viz: That the Trustees of the Sheppard Asylum agree to accept the bequest of the late Enoch Pratt on the conditions contained in the will.

The trustees intend to take proper steps to present the matter to the legislature at its next session; and will be ready to co-operate with the executors in any way to carry out Mr. Pratt's benevolent design.

Very truly yours, etc., GEO. A. POPE, *President.*

PLAINTIFFS' EXHIBIT EXAMINER G. A. P. No. 4.

(Filed with disposition.)

Copy.

JAN. 27TH, 1897.

Mr. Geo. A. Pope, pres't Board of Trustees of the Sheppard Asylum, Baltimore.

DEAR SIR: I beg to acknowledge your esteemed favor of the 26th, and am gratified to know the Trustees of the Sheppard Asylum have agreed to accept the bequest of the late Enoch Pratt, upon the conditions contained in his will.

It will afford me pleasure to render all the assistance in my power to carry out Mr. Pratt's benevolent design as connected with the Sheppard asylum.

Very truly yours, JAMES A. GARY.

29 PLAINTIFFS' EXHIBIT EXAMINER E. P. No. 2.

(Filed with depositions.)

The First Account of James A. Gary and Arnold S. Hyde, Executors of Enoch Pratt, Late of Baltimore City, Deceased.

The accountants charge themselves with the following inventories:

Partial inventory filed November 19th, 1896		$28,727 50
Additional inventory filed December 30th, 1896		1,545,928 43
Interest collected from note of Geo. M. Sternberg		351 77
Cash received from one copy of will of Enoch Pratt		8 33
Rent, warehouse, 202 Buchanan's wharf		400 00
Rent, warehouse, S. E. cor. Balto. and Chas. Sts		3,375 72
Rent, houses on Lexington and Vine Sts		147 97
Rent, houses on Oak St		159 65
Ground rent (personal), annual rent, $321.75, on McCullogh St		161 16
Dividends.		
National Farmers' & Planters' bank	$2,500 00	
Commercial & Farmers' nat'l bank	60 00	
National Mechanics' Bank of Balto	330 40	
Old Town Bank stock	40 00	
Mechanics' Nat'l Bank of New York	272 00	
Maryland Fire Ins. Co	64 65	
Peabody Fire Ins. Co. of Balto	125 00	
National Lead Co. stock, pfd	63 00	
Mercantile Trust & Deposit Co	200 00	
Western Union Telegraph Co	150 00	
Raleigh Gas Co	15 00	
Wilmington & Columbia and Augusta R. R. Co	6 00	
Southern R'y Co	85 00	
Baltimore Steam Packet Co	660 00	
Merchant & Miners' Trans. Co	1,200 00	
Consolidated Gas Co. of Balto	505 00	
		6,276 05
		$1,585,536 58

Interest on bonds.

	City of Baltimore 3½ o-o stock	$7,000 00	
	Town of Henderson, N. C., 6 o-o bonds	255 00	
30	Newberry township, S. C., 6 o-o bonds	66 00	
	United States 6 o-o currency bonds	3,000 00	
	United States 4 o-o currency bonds, 1907	2,040 00	
	United States 4 o-o currency bonds, 1925	900 00	
	United States 5 o-o currency bonds	4,500 00	
	District of Columbia 3.65 o-o bonds	1,368 75	
	Erie R'y Co. 1st-mtg. consol. 7 o-o bonds	840 00	
	Maryland Steel Co. 5 o-o bonds	250 00	
	Consolidated Gas Co. of Balto. 6 o-o bonds	900 00	
	Va. Midland R'y Co. 4th series bonds	88 00	
	Southern R'y Co. 5 o-o bonds	75 00	
	Wilmington & Weldon R'y Co. 7 o-o bonds	35 00	
	Northern Pacific R. R. Co. 1-mtg. 6 o-o bonds	60 00	
	Raleigh Water Co. 6 o-o bonds	30 00	
	Balto. & Potomac 1st-mtg. tunnel bonds	60 00	
	Mason-Maxwell Tel. Mfg. Co. 6 o-o bonds	540 00	
			22,007 75

Interest on mortgages.

	York Road property	$231 66	
	$3,400 mtg. city of Omaha, Neb., No. 028,597	102 00	
	$11,000 mtg. city of Omaha, Neb., No. 027,683	330 00	
	$14,000 mtg. Kansas City, Mo., No. 33230	420 00	
			1,083 66
	And with gain in sale of 66 shares of Seaboard & Roanoke R'y Co		165 00
	Whole amount of estate to be accounted for		1,608,793 99

And they crave an allowance for the following payments and disbursements from Oct. 12th, 1896, to March 20th, 1897:

Court fees.

1896.				
Sept.	24.	Paid register's fees	$5 60	
	24.	Paid for three copies of will	25 00	
	24.	Paid for estate book	1 75	
31				
Oct.	22.	Paid court certificate	6 00	
Dec.	29.	N. A. Bachrach and Edward Biddleman, appraisers, bill Dec. 1st, 1896, for appraisements for personalty, realty, for fees, &c	340 00	
1897.				
Jan.	4.	Court certificates	3 00	
				$381 35

Repairs.

1896.				
Oct.	12.	J. F. Curley, bill Oct. 9th, repairs Vine St	20	
	19.	Anderson & Ireland, nails Buchanan's whf.	40	
	27.	Wm. V. Loury, bill Oct. 14, repairs "Tivoli"	8 63	
	31.	Jos. Sisselberger, bill Sept. 29th, repairs at "Tivoli," pump	15 00	
Nov.	3.	J. W. Enst, bill Oct. 19th, glazing, Lex. & Vine Sts.	3 80	
	3.	J. F. Curley, bill Nov. 2nd, lot for same	20	
	25.	J. F. Curley, bill Nov. 16th, for Lexington St.	75	
	25.	Stephen Banbille, Oct. 1st, gardening Park & Mon. Sts.	10 05	
Dec.	1.	Evan H. Cole, Nov. 30th, plastering 1030 Vine St	3 50	
	8.	Balto., Ches. & Atl., June 28th, zinc paint for Park & Mon. Sts	9 44	
	8.	Geo. I. Roche & Sons, Sept. 30th, painting same	392 14	

	8.	Wm. Dunnett, Sept. 1st, plumbing same. . .	83	
	8.	W. M. Rothrock, Nov. 12th, plumbing, Balto. & Chas. Sts.	90	
	8.	W. M. Rothrock, Nov. 25, same	25 45	
	8.	Thos. C. Basshor & Co., Oct. 22d, repairing boiler Balto. & Chas. Sts	4 13	
	18.	Wallace Stebbins, Dec. 18, for boiler Balto. & Chas. Sts	335 26	
32				
Dec.	29.	Chalmer & Rogers, bill Dec. 28, for plumbing, Lexington St	1 00	
	29.	J. F. Curley, Dec. 24, Lexington St	20	
1897.				
Jan'y	4.	E. J. Dowell, Dec. 10, repairs Baltimore & Chas. Sts	191 82	
	4.	Wallace Stebbins, repairs Dec. 18, Balto. & Chas. Sts	1 05	
	7.	John A. Stewart & Sons, Ap'l 16th, repairing lock	1 00	
	7.	P. A. Sullivan, Sept. 26th, turning on water.	50	
	7.	James Hamilton, Sept. 29, draining yard	1 85	
	7.	Sam'l J. Jefferson. Oct. 2d whitewashing	12 00	
	7.	W. E. Ridgaway Oct. 1st, carpenter's work	19 02	
	7.	John A. Stewart & Sons, Oct. 21st, repairing bells	2 50	
	7.	Robert Hughes, Nov. 1st, plumbing	2 48	
	7.	John R. Lewis, Dec. 1st, papering	2 10	
	7.	Geo. Knipp & Bro., Nov. 3d, plumbing	13 70	
	7.	Geo. Knipp & Bro., repairing gas fixtures	4 15	
	7.	M. J. Frederick & Bro., Nov. 1st, new bath-tub, &c	73 86	
	7.	W. E. Ridgaway, Jan. 1st, carpenter work	50	
	14.	Wallace Stebbins, repairs Balto. & Chas. Sts.	5 07	
	27.	Geo. J. Roche & Sons, Dec. 31st, Balto. & Chas. Sts	14 78	
	27.	Geo. J. Roche & Sons, Jan. 1st, Buchanan's whf	1 40	
	27.	James Bates & Sons, Jan. 23d, repairs Buchanan's whf	40 00	
Feb'y	15.	J. F. Curley, repairs Jan'y 18th, Lexington St.	20	
33				
Feb'y	27.	Wallace Stebbins 1-18, '97, Balto. & Chas. Sts.	4 86	
	27.	Wallace Stebbins 1-28, '97, Balto. & Chase Sts.	5 26	
	27.	Wm. Dunnett, 2-17, '97, Lexington St	67 78	
	27.	W. H. Rothrock, Feb. 27th, Balto. & Chas. Sts.	23 24	
Mar.	20.	Con. Gas Co., Mar. 13th, Balto. & Chas. Sts.	3 50	
		Wallace Stebbins, 2-27, Balto. & Chas. Sts	2 10	
		W. H. Rothrock 3-16 Balto. & Chas. Sts.	25 92	
		E. J. Dowell 3-20, Balto. & Chas. Sts	18 18	
		J. G. Hetzell & Sons, 3-17, Lex. & Vine Sts.	23 95	
		Geo. J. Roche & Sons, 3-20, Lex. & Vine Sts.	108 00	
		E. J. Dowell, 3-20, Lex. & Vine Sts.	220 15	
				1,702 82
Nov.	5.	National Farmers' & Planters' bank, per receipt		1,620 39
		Funeral expenses:		
1896.				
Oct.	3.	H. W. Jenkins & Sons, Sept. 17th, '96.	$491 75	
	3.	Rev. Rush R. Shippens, expenses attending funeral	50 00	
				541 75

Ground rent.

1896.				
Sept.	26.	Seaton Schroder 6 mos.' ground rent, Balto. & Chas. Sts	$300 00	
Oct.	3.	6 mos.' ground rent, $178.75 per annum, McCulloh & Dolphin Sts.	89 38	
Nov.	5.	6 mos.' ground rent of $80.00 per annum, Lexington St.	40 00	
Dec.	8.	6 mos.' ground rent of $80.00 per annum 103 Lexington St.	40 00	
1897.				
Jan'y	19.	6 mos.' ground rent of $300.00 per annum 202 Buchanan's whf.	150 00	
34				
Mar.	1.	6 mos.' ground rent of $178.75 per annum, McCulloh & Dolphin Sts.	89 38	
	8.	6 mos.' ground rent of $122.50 per annum, 2105 Oak St	61 25	
	8.	6 mos.' ground rent of $122.50 per annum, 2107 Oak St	61 25	
				831 26

Expenses.

1896.				
Sept.	30.	Collector, commission on rents	53	
	30.	Peabody Fire Insurance Co., for insurance on $15.00 furniture &c. "Tivoli" for three years to Sept. 29th, 1899	22 50	
	30.	John D. Slade for wages self and farm hands to Oct. 1st, '96, per receipt, "Tivoli," Balto. Co	98 67	
Oct.	6.	Commission for collecting rents	38	
	8.	Water rent, cor. Chas. & Balto. Sts	43 08	
	8.	"Balto. American," bill for advertising legal notice.	4 00	
	8.	A. S. Abell & Co., bill for advertising legal notice.	6 09	
	8.	Cushing & Co., books, October 5th	96	
	8.	Cushing & Co., bank book, Sept. 3d	2 00	
	8.	Subscription to Balto. "Sun"	1 96	
	12.	Collector's commission on rents	40	
	19.	Balto. Seed & Impl't Co. for seed, Tivoli.	11 46	
	19.	Chas. M. Taste, for shoeing	13 25	
	19.	Evening News Publishing Co., adv't'g legal notice bill 9-23	4 00	
	19.	J. Lanahan's bill, Sept. 28, for books	11 00	
	19.	H. W. Herrmann, Oct. 10th, repairing harness	17 15	
35				
Oct.	19.	E. Pratt & Bro., Oct. 1st, petty expenses.	35 71	
	22.	J. M. Finney, M. D., bill Sept. 1st, for prof. services	125 00	
	31.	Lawrence J. Finnelly, Sept. 21st, services nursing	100 00	
	31.	The Tribune Association bill for adv. death.	3 00	
	31.	E. Pratt & Bro., expressage on bonds	50	
	31.	Bernard A. Rinn, salary as clerk to date.	20 00	
	31.	James E. Emory, one mo.'s wages as janitor.	16 00	
Nov.	1.	Jas. D. Slade, sundry expenses, Tivoli, per rept.	110 80	
	19.	R. R. Boarman, legal advice given, M. E. P.	100 00	
	24.	Insurance for $4,000 on warehouse 202 Buchanan's whf. to Nov. 10, '97	46 00	
	30.	Bernard A. Rinn, salary as clerk to date	20 00	
	30.	Jas. H. Emory, 1 mo.'s wages as janitor	16 00	
Dec.	1.	Jas. D. Slade, sundry exp. "Tivoli," Balto. Co.	99 91	

	2.	Mercantile Trust & Deposit Co., for rent of safe for one year, to Nov. 1st, 1897	35 00
	2.	The J. F. W. Dorman Co. Dec. 2, for stamp	30
	8.	Dr. Thos. Shearer, bill Oct. 1st, '96, for professional services	300 00
	8.	F. W. Sandrich, bill Oct. 1st, repairing carriage	18 00
	8.	G. W. Baylies, corn for Tivoli	3 50
	8.	G. W. Baylies, corn for Tivoli, bill Oct. 20th	3 75
	8.	E. Stabler, Jr. & Co., Sept. 22d, manure for Tivoli	13 50
	8.	Bennet Bros., bill Sept. 30th, manure for Tivoli	8 00
36			
Dec.	8.	Jos. Kaufman & Sons, livery and horse hire bill 9-29	32 90
	8.	J. J. Walsh & Son, bill Sept. 10th, work, mem. and pork	4 00
	8.	J. A. Gary, extra trip to Washington, Dec. 8th	4 00
	8.	Cushing & Co., bill Nov. 1st, copy book	1 00
	8.	Jas. J. Bridges & Co., bill Dec. 2, for books	3 50
	12.	A. S. Hyde, for services rend. keeping accounts, per receipt	166 66
	18.	Dr. Albert Wanstall's bill Dec. 14th, for prof. serv	1,975 00
	18.	Cons. Gas Co., bill Dec. 17th, cor. Balto & Chas. Sts	50
	18.	E. Stabler, Jr. & Co, bill Dec. 17th, for manure	19 50
1897.			
Jan'y	2.	Jas. D. Slade, sundry expenses, "Tivoli" per receipt	100 15
	2.	Bernard A. Rinn, one mo.'s salary to Dec. 31st	20 00
	2.	Jas. H. Emory, one mo.'s salary as janitor to Jan. 2d, '97	23 00
	2.	E. Pratt & Bro., bill Dec. 31st, petty expenses	2 75
	2.	Arnold S. Hyde, for services to Jan'y 1st, 1897	83 34
	4.	Water rent, cor. Balto. and Chas. Sts	29 45
	7.	Official history of the Balto. fire department, for the publication of portrait and biography of E. P., in same	100 00
	14.	Cons. Gas Co. bill Jan. 14th, Balto. and Chas. Sts	2 25
	27.	Fidelity & Causalty Co., N. Y., for insurance on plate glass, Balto. and Chas. Sts., for one year to Jan'y 25th, 1898	17 93
37			
Jan'y	27.	Yeaton & Co., bill Dec. 16th, 1896, for coal "Tivoli"	14 38
	27.	A. S. Abell & Co., Jan'y 20th, '97, advertising legal notice	37 80
	27.	Jas. H. Emory, for wages to Jan'y 30th, 1897, per receipt	20 00
	27.	E. Pratt & Bro., Jan'y 21st, '97, telegram to New York	25
	27.	A. S. Hyde, for services to Feb'y 1st, 1897, per receipt	83 33
Feb'y	1.	John D. Slade, sundry expenses, "Tivoli," per receipt	103 75
	23.	Water rent, 1030, '32, '34 Vine St	11 40
		Water rent, 1037, '39 Lexington St	9 50

		Water rent, 202 Buchanan's whf	9 50	
		Water rent, 2105 Oak St	14 25	
	27.	E. Pratt & Bro., bill Feb'y 10th, petty expenses	4 65	
	27.	Cons. Gas Co., bill Feb'y 16th, cor. Balto. and Chas. Sts	3 25	
	27.	A. S. Abell & Co., bill Feb'y 25th, advertising	3 53	
	27.	James H. Emory for wages to March 1st, per receipt	20 00	
	27.	A. S. Hyde, for services to March 1st, per receipt	83 33	
Mar.	1.	J. D. Slade, sundry expenses, "Tivoli," per receipt	100 40	
	20.	E. Pratt & Bro., bill M'ch 20th, '97, for petty expenses	1 49	
		J. H. Emory for services per receipt, 20th instant	15 00	
		State and city taxes for 1896, on additional personal	4,472 79	
				8,896 93
38		Paid Maria Louisa Pratt on ac. income.		
1896.				
Sept.	30.	Per receipt	$350 00	
Oct.	31.	Per receipt	400 00	
Nov.	30.	Per receipt	550 00	
Dec.	12.	Per receipt	200 00	
1897.				
Jan'y	8.	Per receipt	1,250 00	
	30.	Per receipt	600 00	
Feb'y	27.	Per receipt	450 00	
				3,800 00
				$17,774 50
		And they crave allowance for this sum, being error in inventory of three (3) shares of Seaboard and Roanoke R. R. Company		292 50
		And they crave allowance for this sum, being the same stock of Baltimore Steam Packet Co. as appraised in partial inventory, and also in the additional inventory, being eleven shares of said Steam Packet Co. stock at $1,000 per share, and with commission paid on sales of 66 shares of Seaboard and Roanoke R. R. Company		11,000
				165 00
		And for the household furniture, horses and carriages, &c., bequeathed absolutely to Mrs. Maria Louisa Pratt, wife of testator		3,359 00
		The above includes the statues of "Shepherd Boy" and "Compospe" which after the death of Mrs. Maria Louisa Pratt become the property of Peabody Institute of Baltimore.		
		And for allowance to said executors, being the difference in the appraised values, and the par values of stocks and bonds delivered to Mrs. Maria Louisa Pratt under the terms of the first clause of testator's will "at par."		
		Appraised values	$514,730 00	
		Par values	400,000 00	
				114,730 00
39		Docket costs in matter of calling meeting of distributees, legatees, &c.		$55 00
		Petition, orders, copies, sales, register's fees for the account, copy in book		85 00
		Releases for distributees		25 00
		Typewriting account and copy and preparing the same		30 00
		These accountants' commissions on $20,000.00 at 10 o-o $2,000.00 and these accountants' commission on $1,577,500.50 at 2 o-o $31,550.01		33,550 01

Allowed these accountants for the following stocks and bonds transferred and delivered to Mrs. Maria Louisa Pratt, in accordance with the terms of the will:		
300 shares Merchants' and Miners' Transportation Co. stock	$30,000 00	
2,000 shares National and Farmers' and Planters' bank	50,000 00	
720 shares National Mechanics' Bank of Baltimore	7,200 00	
272 shares Mechanics' Bank of New York	6,800 00	
100 shares National Mercantile Trust & Deposit Co. of Balto.	5,000 00	
24,000 Erie R'y 1st consol. mtge. 7's	24,000 00	
2,000 Balto. and Potomac R'y 8 o-o tunnel	2,000 00	
50,000 United States 4's of 1907	50,000 00	
180,000 United States 5's of 1904	180,000 00	
45,000 United States 4's, 1925	45,000 00	
		400,000 00
And with balance of income, due Mrs. Maria Louisa Pratt on $500,000.00—$40,000 of which was bequeathed to her absolutely, and $100,000 to the Safe Deposit & Trust Co. in trust		5,746 83
Allowed these accountants by the third item of the will for this sum deposited and transferred to the Safe Deposit & Trust Co. of Balto. in trust to pay over the income thereof to Mrs. Maria Louisa Pratt, during her life to help pay taxes, repairs and expenses on testator's dwelling, which was bequeathed to said Mrs. Maria Louisa Pratt for life; or for any other purpose she may devise, after her death said stock to the Meadville Theological School, a corporation located at Meadville, Penn. for the uses and purposes of said theological school to be held or sold at its discretion:		
100,000 City of Baltimore 3½ o-o stock of 1928—@ 105		105,000 00
Collateral tax paid register of wills on $73,500, being the value of said legacy after deducting the life estate of Mrs. Pratt of $31,500.00		1,837 50
Allowed these accountants for the following legacies paid under the fifth item of the will:		
Enoch Pratt Callow	$1,000 00	
Enoch Pratt Hyde	1,000 00	
Harry Pratt Jones	1,000 00	
Shepard G. Miller, assignee of Enoch Pratt McCullogh	1,000 00	
Enoch Pratt Heineken, Prince William Co., Va.	1,000 00	
Mary E. Fearing, guardian of Enoch Pratt Fearing, of Elizabeth City, N. J.	1,000 00	
Henry Seem	1,000 00	
Shepherd G. Miller, assignee for Bernard A. Rinn	1,000 00	
Retained by these executors the legacy as bequeathed to Enoch Pratt Weigel, and when property indentified, payable to Thos. R. Clendinen, guardian of said Enoch Pratt Weigel, minor	1,000 00	
Deposited in the Central Savings Bank of Balto., the legacy of Enoch Pratt Davison, said Davison being unknown to these executors, the legacy deposited in the name of the executors in said bank, subject to the further order of the orphans' court of Baltimore city, until the proper identification of Enoch Pratt Davison.	1,000 00	
		10,000 00
Collateral tax paid registor of wills on above legacy as per the eleventh item of will		250 00
Allowed these accountants for the following legacies paid under the eighth item of will:		
John Davis	$500 00	

41	Margaret Joyce	300 00	
	Emily Boston	200 00	
			1,000 00
	Collateral tax paid under the eleventh item of the will of testator on the above legacies		25 00
	Allowed these accountants for this amount paid to David G. Pratt and Gerard C. Tobey, trustees under the last will and testament of the said Enoch Pratt (with the request that they transfer $5,000 thereof to the Congregational church and society, Titicut parish, North Middleborough, Mass., where the testator was born, Sept. 10th, 1808, and that they transfer the sum of $10,000 thereof to the town of Middleborough, Mass., a body politic, under the laws of said State, for the support of the public library of said town)		15,000 00
	Collateral tax paid register of wills, under the eleventh item of will		375 00
	Allowed these accountants for this amount paid to the Boys' Home Society of Baltimore, a corporation, incorporated under the laws of the State of Maryland		10,000 00
	Collateral tax paid register of wills, under the eleventh item of said will		250 00
	Allowed these accountants for the following, paid under the seventh item of the will of testator, being the sum of $12,000.00, as expressed therein to be divided among the cashier, inside watchman and clerks of the National Farmers' and Planters' Bank of Balto., who are now in its service (said will having provided that said $12,000 be divided equally among the said parties "who are now in its employ, provided they respectively remain in its service at the time of my death):"		
	Mrs. Carson, *adm. c. t. a.* of Richard Cornelius	1,000 00	
	Joseph A. Tudor	1,000 00	
	Wm. L. Wilcox	1,000 00	
42	Enoch Pratt Holden	1,000 00	
	Chas. H. Stone	1,000 00	
	Fred'k G. Whelan	1,000 00	
	John H. Blacklock	1,000 00	
	Richard B. Sellman	1,000 00	
		$8,000 00	
	Joshua A. Dun	1,000 00	
	John H. England	1,000 00	
	The sums claimed by James E. Tate and Wm. M. Tucker, same being held by these executors awaiting the determination of a suit pending in circuit court No. 2, of Baltimore city, in relation to same	2,000 00	
			12,000 00
	Collateral tax paid on above to register of wills, under 11th item of will		300 00
	Add loss on sales of U. S. bonds		875 00
			$743,725 34
	Balance due estate consisting of the following:		
	22 shares Balto. Steam Packet Co., at 1,000		22,000 00
	Balance due estate at "Tivoli," furniture, &c		1,616 50
	34,000 city of Balto. 3½ o-o stock, 1928		35,700 00
	266,000 city of Balto. 3½ o-o stock, @ 105		279,000 00
	8,500 Henderson, N. C., 6 o-o bonds, @ 100		8,500 00
	1,100 Newberry, S. C., township 6 o-o bonds, @ 100		1,100 00
	2,000 Storey Battery township 6 o-o bonds, @ 90		1,800 00
	30,000 United States 6 o-o currency bonds, @ 105		31,500 00
	52,000 United States 4 o-o currency bonds, 1907, @ 110		57,200 00
	75,000 District of Columbia 3.65 o-o bonds, @ 109		81,750 00

	80,000 Columbia, Newberry & D. R. R. Co., 1st-mtg. 6 o-o 1937, @ 60	48,000 00
	10,000 Maryland Steel Co., 5 o-o bonds, 1922, @ 83	8,300 00
	30,000 Consolidated Gas Co. of Balto. City 6 o-o 1910, @ 116	34,800 00
	1,000 Belleview, Zanesville & Cinn. R'y 6 o-o 1899, @ 70	700 00
	1,000 Wilmington & Weldon R. R. Co. 7 o-o bonds	1,025 00
	4,400 Va. Midland R. R. Co., 4th series, 1921, @ 90	3,960 00
	3,000 Southern R'y Co., 1st consol. mtg., 5 o-o bonds, 1994, @ 90.	2,700 00
43	1,000 Raleigh Water Co., 6 o-o bonds, 1931, @ 75	750 00
	18,000 Mason & Maxwell Tel. Mfg. Co., 6 o-o bonds, 1905, @ 60	10,800 00
	3,400 Lombard Investment Co., 6 o-o bonds, city of Omaha, Neb., @ 100	3,400 00
	11,000 Lombard Investment Co., 6 o-o bonds, city of Omaha, Neb., @ 100	11,000 00
	14,000 Lombard Investment Co., 6 o-o bonds, Kansas City, Mo., @ 100	14,000 00
	9,600 Columbia, Newberry & Lawrence certificate of indebtedness, no present value.	
	20 shares Commercial Farmers' national bank, @ 122	2,440 00
	106 shares National Mechanics' Bank of Balto., @ 16½	1,749 00
	100 shares Old Town bank, @ 15½	1,550 00
	431 shares Maryland Fire Ins. Co. of Balto., @ 5	2,155 00
	100 shares Peabody Fire Ins. Co., @ 47	4,700 00
	118 shares Balto. & Ohio second pfd.	4,720 00
	200 shares Balto. & Ohio common, @ 17	3,400 00
	1,963 shares Newstown Elec. Co. of Balto., @ 20	39,260 00
	25 shares Parkersburg Branch R'y Co., @ 50	12 50
	18 shares National Lead Co., common stock, @ 26	468 00
	18 shares National Lead Co., preferred stock, @ 91	1,638 00
	8 shares Penna. Steel Co., common stock, @ 39	312 00
	3 shares Penna. Steel Co., preferred stock, @ 70	210 00
	10 shares Maryland Title Ins. and Trust Co., stock, @ 60.	600 00
	60 shares Western Union Tel. Co. stock, @ 87	5,220 00
	50 shares C. A. Gambrill Mfg. Co. stock, @ 75	3,750 00
	5 shares Raleigh Gas Co. stock, @ 75	375 00
	2 Wilmington, Col. & Aug. stock, @ 106	212 00
	5 Phila. & Reading R. R. stock, @ 20	100 00
	24 shares Raleigh & Gaston R. R. Co., @ 45	1,530 00
	10 shares Raleigh & Augusta Air Line Co., @ 1	10 00
	85 shares Southern R'y Co. pref. stock, @ 30	2,550 00
	10,167 shares Locust Point Co. of Balto. City, @ $1.00	10,167 00
	202 shares Consolidated Gas Co. of Balto. City, @ 63	12,726 00
	20 shares Auditorium Co. stock, @ 50	1,000 00
	20 shares Home Telephone Co. of Balto., @ 25	250 00
	53 shares Central New Jersey Land Imp. Co.	477 00
	2 shares American Loan & Trust Co., no present value.	
	80 shares Sciato Water Co., no present value.	
	Mortgage debt of Chas. B. McColgan, secured by a mortgage on land, York road	7,000 00
44	Amount deposited with Balto. Equitable Society, for insurance	2,125 00
	Promissory note of H. William Ellicott, June 1, 1895, on demand, with interest, $530.36, secured by 250 shares Locust Point Co. of Balto. City stock	250 00
	Promissory note of Geo. M. Sternberg, Aug. 15, 1893, on demand, with interest at 5 o-o for $16,885.10, secured by 234 shares Western Union Telegraph Co. stock as collateral	16,885 10
	50 shares Richmond, North Irwin & Beattyville R'y Co. stock, no present value.	
	$5,000 same railroad bonds, no present value.	
	$300.00 loan to A. M. McPheeters, no present value.	
	Leasehold property and improvement, Charles and Baltimore Sts., G. R. 680-463, ground rent, $600.00, No. 1 E. Baltimore St.	50,000 00
	Leasehold property and improvement on west side of Frederick St. wharf, A. P. 859-194, ground rent $300.00, now known as 202 Buchanan's whf.	4,000 00

Two lots and improvements on south side of Lexington St., running back to Vine, G. R. 785-546, ground rent $80.00 each, property being known as 1037 and 1039 W. Lexington St. and 1030 and 1034 Vine St.	3,500 00
Lot and improvements on east side of Oak St., J. E. 1278-78, ground rent $122.50, 2105 Oak St	3,500 00
Lot and improvements, east side of Oak St., J. B. 1278-789, ground rent $122.50, 2107 Oak St	3,500 00
Annual subground rent on lot on northwest side of Dolphin and northeast side of McCullogh amounting to $6,321.75, whole lot being subject to original ground rent of $178.75, F. A. P., 834-341.	2,383 33
	$854,626 43

Recapitulation.

Payments and disbursements	$743,725 34
Balance due estate in bonds and stocks	854,626 43
	$1,598,351 77
And in cash	10,442 22
	$1,608,792 99

45 BALTIMORE, *March 29th*, 1897.

Received for the use of the State of Maryland of Jas. A. Gary and Arnold S. Hyde, executors of Enoch Pratt, deceased, the sum of three thousand and thirty-seven dollars and fifty cents, being a tax or duty of two and one-half per centum on $121,500.00, the amount of certain collateral legacies bequeathed by the will of the said deceased, and which are subject to said tax or duty for the use of said State, in pursuance of the Public General Laws of Maryland, article 81, section 102, &c., to wit, on $121,500 passing to Enoch Pratt Hyde *et al.* $3,037.50.

THOS. W. MORSE,
Register of Wills.

BALTIMORE, *Sept. 22d*, 1897.

Received for the use of the State of Maryland of James A. Gary and Arnold S. Hyde, executors of Enoch Pratt, deceased, the sum of twenty-one thousand three hundred and sixty-five dollars and sixty-seven cents, being a tax or duty of two and one-half per centum on $854,626.43, the amount of certain collateral legacies bequeathed by the will of the said deceased, and which are subject to said tax or duty for the use of said State, in pursuance of the Public General Laws of Maryland, article 81, section 102, &c., to wit, on $854,626.43, residue of estate of Enoch Pratt, $21,365.67.

THOS. W. MORSE,
Register of Wills.

BALTIMORE CITY, *ss:*

On the 27th day of March, 1898, came Jas. A. Gary and Arnold S. Hyde, executors, and made oath on the Holy Evangely of Almighty God that the aforegoing account is just and true as stated, and that they have paid or secured the payment of every sum or

sums for which they crave an allowance, which after examination, is passed by order of the orphans' court.

Test: THOS. W. MORSE,
Register of Wills for Baltimore City.

STATE OF MARYLAND, *Baltimore City,* } *ss:*

I, Stephen R. Mason, register of wills, and by law keeper
46 of the seal and of the records, and of the original papers of the orphans' court for Baltimore city, do hereby certify that the aforegoing is a true and full copy of the first administration account of Enoch Pratt, late of said city, deceased, taken from adm. acc'ts, Liber T. W. M., No. 153, folio 422, being one of the records kept in the office of register of wills for Baltimore city.

In testimony whereof, I hereto subscribe my name and affix the seal of said court and office this 16 day of May, in the
[SEAL.] year of our Lord eighteen hundred and ninety-eight.

STEPHEN R. MASON,
Register of Wills for Baltimore City.

Bill of Interpleader and for Injunction.

(Filed 10th March, 1898.)

JAMES A. GARY and ARNOLD S. HYDE, Executors of the Will of Enoch Pratt, *vs.* THE TRUSTEES OF THE SHEPPARD AND Enoch Pratt Hospital, a Corporation; David G. Pratt and Gerard C. Tobey, Trustees; Congregational Church and Society of Titicut Parish, North Middleborough, Massachusetts; Town of Middleborough, Massachusetts; Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, J. Lowell Pratt, David G. Pratt, Edmund T. Pratt, Moreland L. Pratt, Isaac Pratt, and Susannah Tobey.	In the Circuit Court No. 2 of Baltimore City.

To the honorable the judge of said court:

Your orators complaining, says:

1. That the late Enoch Pratt, of Baltimore city, died on the seventeenth day of September, 1896, leaving a last will and testament, duly executed in accordance with the laws of Maryland, which has been admitted to probate and is now of record in the orphans' court of Baltimore city, and a copy of which marked "Plaintiffs' Exhibit A," is herewith filed, and it is prayed may be taken as part of this bill.

47 2. That by his original will the said testator appointed as executors his wife, Maria Louisa Pratt, and his friends, Henry

Janes and James A. Gary, one of your orators, but in consequence of the death of the said Henry Janes, in the lifetime of the said testator, the latter added a codicil to his will, as will appear from the said "Exhibit A," whereby he revoked a devise in favor of said Henry Janes, and appointed your orator, Arnold S. Hyde, one of the executors in his place; and the said Maria Louisa Pratt declining to serve as one of the executors, letters testamentary were thereupon by the orphans' court of Baltimore city granted to your orators.

3. That your orators proceeded with their administration under the direction of the said orphans' court, and having paid all the claims presented against the estate of their testator except one for about eleven hundred and thirty dollars, which was presented by one Edward L. Tunis, but was disputed by your orators and is the subject of a suit now pending in the Baltimore city court, your orators petitioned the said orphans' court to name and appoint a day for the payment and distribution of the said estate among the persons entitled as legatees, distributees or otherwise, in accordance with the provisions of chapter 255, of the Acts of 1896, of the General Assembly of Maryland, and the said court appointed the twenty-fifth day of March, 1897, for that purpose, whereof notice was duly given as required by the said act.

4. That on the day so appointed all of the legatees under the said will, with the exception of those hereinafter mentioned, duly appeared in person or by attorney, and your orators have fully paid and satisfied the legacies to those so appearing; but the Trustees of the Sheppard Asylum, the corporation to which the said testator conditionally devised and bequeathed the residue of his estate, did not appear on the said day, for the reason that it had not then been able to comply with the condition, and was therefore at that time not entitled to take the said residue, nor did any of the said testator's heirs or next of kin, or any of the persons alternatively named as his residuary devisees and legatees appear in the said orphans' court on the day so appointed, and no order was passed nor was any action taken by the said court in respect to the said residue beyond the passing of the account of which a copy marked "Plaintiffs' Exhibit B" is herewith filed and it is prayed, may be taken as part hereof, showing that after paying or providing for all the debts and special legacies, there remained of the personal property a balance of over eight hundred thousand dollars in the hands of your orators, besides the large amount of real estate the rents of which are being collected by your orators.

5. And now your orators show unto your honor that, among the special legacies referred to in the said account was the one contained in the ninth clause of the said will, which is as follows: "I give and bequeath to David G. Pratt and Gerard C. Tobey and the survivor of them as trustees, the sum of fifteen thousand ($15,000) dollars, with the request that they transfer five thousand
48 ($5,000) dollars thereof to the Congregational church and society, Titicut parish, North Middleborough, Massachusetts, (where I was born 10th September, A. D. 1808) and that they trans-

fer the sum of ten thousand ($10,000) dollars thereof to the town of Middleborough, Massachusetts, a body politic under the laws of the said State, said sum to be invested by said town and the income thereof to be annually paid by it for the support of the public library of the said town."

And this legacy your orators have not as yet paid for the reasons hereinafter stated.

6. That while the said David G. Pratt and Gerard C. Tobey have as such trustees demanded of your orators payment of the said sum of fifteen thousand ($15,000) dollars and the said, "The Trustees of the Sheppard Asylum" the conditional residuary legatee expressed their willingness to assent to such payment, some of the alternative residuary legatees were unwilling to give their assent, and, furthermore, although your orators are informed and believe that both the said Congregational church and the said town are duly incorporated, they know not whether either is authorized by law to receive such legacy; nor do they know, assuming that both said church and said town have the requisite capacity, whether or not they could safely make payment to the said David G. Pratt and Gerard C. Tobey as trustees, inasmuch as they are advised and therefore charge that, *that* since the said trustees have no duty to perform except to pay over the money, it may be that the trust is executed and the legal title to the said legacy passed at once, in the proportion designated by the testator, to the said town and the said church, so as to entitle the latter to demand a second payment of your orators in case the said trustees, having received the money should fail to pay it over to the true owners.

7. Your orators accordingly show unto your honor, that they are in doubt as to the true meaning and legal effect of the said ninth clause and are embarrassed in their administration of the said estate and know not how to proceed in respect to the said legacy, except under the guidance and with the protection of this court; but as will be hereinafter shown, a greater and more serious difficulty confronts them in regard to the disposition of the large residuary estate, which constitutes the great bulk of the property now in their hands.

8. That after making a provision for his wife, which by the fourth clause of his will the said testator declares to be "in lieu of and in full for all claim on her part for dower or thirds in or upon my estate, real and personal," and after sundry other devises and bequests, the said testator by the twelfth clause disposes of the residue of his estate as follows:

"Having in my lifetime libe-ally provided for my neices and nephews hereinunder named, I do now hereby give devise and bequeath all the rest, residue and remainder of my estate of every kind and description, whether real, personal or mixed, and wher-
49 ever the same may be situate, of which I may die possessed, or be in any way entitled to at the time of my death, after the payment of all debts justly due by me and after satisfying all the devises and bequests hereinbefore set forth, to the 'Trustees of the Sheppard Asylum,' a corporation already incorporated by the

General Assembly of the State of Maryland, by said name, style and title, and its successors forever; it being my intention and meaning to make said corporation, 'The Trustees of the Sheppard Asylum,' the residuary legatee and devisee of and under this my last will and testament; and I direct my executors to set over, transfer and convey by proper deeds, assignments and transfers, the said residue of my estate to the said corporation, upon and subject, however, to the following condition and bargain, namely: That the said trustees shall adopt as the name and style of said corporation the title of the 'Trustees of the Sheppard and Enoch Pratt Hospital,' and shall obtain at the first session of the General Assembly of Maryland after my death an amendment to their charter, authorizing the said change of title and adopting the said name of the 'Trustees of the Sheppard and Enoch Pratt Hospital,' as the future title of the said corporation. While I do not wish to alter the operations and management or the working of the said asylum as now existing and being carried on, it is my wish and will that the income from my said residuary estate shall be used to complete the present buildings and grounds, and for the erection of such other buildings or building as will accommodate not less than two hundred additional inmates, and after that, the income from my aforegoing donation shall be devoted mainly to the care of the indigent insane in the most advisable manner, at *very low charges*, or absolutely *free*, as the trustees of said corporation, in the exercise of their best judgment as to the rate to be charged may deem best and wisest to promote the object of this donation; provided, however, and it is expressly my will, that in case the said Trustees of the Sheppard Asylum fail to obtain from the General Assembly of Maryland, at its first session after my death, the amendment to the charter of said institution hereinbefore stipulated and provided for, and fail to adopt the name of the 'Trustees of the Sheppard and Enoch Pratt Hospital,' then, and in that case, it is my will, and I then give, devise and bequeath (in lieu of the aforegoing provision) the said residue of my estate to my niece, Ellen J. O. Phinney, and to my nephews, Gerard C. Tobey, Horace P. Tobey, J. Lowell Pratt, David G. Pratt, Edmund T. Pratt and Morland L. Pratt, to be in that case set apart for and equally divided among them and the issue *per stirpes* of any of them who may be dead at the time of my decease; such issue to take the share to which its or their parent would, if living, have been entitled.

I direct my executors, until it shall have been decided as above provided whether the said condition of my aforegoing devise and bequest of said residue will be performed; that is to say, whether the said corporation will obtain authority as aforesaid, to change its title, and will in fact adopt the title above designated, to keep all buildings and improvements on my property insured and in good order and condition and pay all taxes and charges thereon, and to collect the rents and income of said residue of my estate, and invest the said net income in Baltimore City stock, the same to be added to and constitute a part of the said residuary estate."

9. That the said "Trustees of the Sheppard Asylum" was incorporated by the General Assembly of Maryland by chapter 274 of the acts passed at the January session of 1853, of which a copy is herewith filed, marked "Plaintiffs' Exhibit C," and it is prayed may be taken as a part hereof; and its charter was subsequently amended by act of 1886, chapter 9, whereof a copy marked "Plaintiffs' Exhibit D," is also filed herewith, and it is prayed may be taken as part of this bill; and the said corporation has notified your orator that at the present session of the General Assembly of Maryland, which is the first since the said testator's death, it obtained the passage of an act of which a copy marked "Plaintiffs' Exhibit E," is filed herewith, and it is also prayed may be taken as part of this bill, making the change in its corporate name required by the said will; that the said last-mentioned act has been approved by the governor of the State and the new name adopted by the corporation; and that the said corporation having fully complied with the condition, is ready to receive the benefit of the said testator's bounty, and demands from your orators the payment and transfer of the said residue.

10. Your orator- further show unto your honor that in addition to the said demand which was made within the last two or three days, the said corporation has filed in this honorable court against your orators a bill, whereof a duly certified copy, marked "Plaintiffs' Exhibit F," is herewith filed as part hereof, — which it prays in effect, that a decree may be passed requiring your orators to pay over and transfer to it all the said residue, but, on the other hand, it is a fact of public notoriety, that when the bill authorizing the aforesaid change of name was presented to the legislature, it was promptly and vigorously opposed, both by argument before the committee to which it was referred, and by publications in the newspapers, on the ground, among others, that the condition so imposed by the said testator involved an unlawful change, not only in name, but in the objects and purposes of the said corporation, which *is* was beyond the power of the legislature to authorize, and therefore, that the said bill, if adopted, would be unconstitutional and of no effect; that some of the members of the legislature who voted in favor of the said bill expressly stated, as one of their reasons for so doing, that the question of its constitutionality should properly be left for judicial determination; that when the said bill had been passed by the legislature and was presented to the governor of the State for his approval, the same argument against it was repeated; and again it was stated that the opposition would not be ended by his approval, but that the questions were of such a nature that they could be determined only by some court of com-
51 petent jurisdiction; and your orators further show, that since the said bill was approved and signed by the governor they have been formally notified by the said alternative residuary devisees and legatees not to transfer the property to the said corporation, as they proposed to contest its claim; and your orators file herewith the notice so served upon them by the said alternative

devisees and legatees, which is marked "Plaintiffs' Exhibit G," and it is prayed, may be taken as part of this bill.

11. That since the passage of their said account by the orphans' court of Baltimore city, your orators have held and managed the said estate, as required by the said will, until it should be determined whether or not the said condition would be performed; and they file herewith an account, marked "Plaintiffs' Exhibit H," which it is prayed, may be taken as part hereof, showing their receipts and disbursements during this period, and that the total value of the residuary estate, both real and personal so held by them, amounts to about twelve hundred thousand dollars.

12. They also show, that inasmuch as the said Maria Louisa Pratt has already accepted the provisions of the said will in her favor, she has no further right or interest in the estate of the said testator; but the persons, who in addition or in opposition to the several devisees and legatees above named, are contingently interested in the said estate as the heirs-at-law and next of kin of the said Enoch Pratt are his brother, Isaac Pratt, who resides in the town of Allston, in the county of Suffolk, and State of Massachusetts, and his sister, Susannah Tobey, a widow, who resides in the town of Wareham, in the county of Plymouth, in the same State; and that the said devisees and legatees, other than the corporation last named, all reside in the State of Massachusetts, and are non-residents of the State of Maryland.

13. That except to the extent to which your orators may be entitled to commission and the extent to which the said fund may properly be chargeable with legal services rendered to the said (*to the*) estate, and with incidental expenses connected therewith your orators have no right, claim or interest whatever in or to the estate in their hands; and while they are ready and anxious to (*to*) turn over the whole of the net residue to whoever may be rightfully entitled thereto, your orators are unable to decide between the aforesaid conflicting claimants, and cannot safely recognize either of the said conflicting claims; but having already been sued as aforesaid by the corporation, they are threaten-d with a similar proceeding on the part of the adverse claimants.

And your orators offer herewith to hand over and deliver said residue into this honorable court, or to retain the same in its present productive shape until the questions in this bill suggested are determined as this court may order.

14. And forasmuch — your orators are in doubt as to what is their duty in the trust so confided to them by their said testator,
52 and are unable to proceed in the administration and winding up of his estate without the guidance and direction of some court of competent jurisdiction, and can be protected only by this honorable court from the twofold liability which threatens them from the conflicting claims of the said legatees and devisees, and the heirs and next of kin of their said testator, they pray this honorable court to assume jurisdiction of their said trust, and to guide and direct them in the further administration of the said estate.

16. To the end, therefore:—

(*a.*) That the true meaning and effect of the said ninth clause of the said will may be declared; and

(*b.*) That it may be determined whether the fund bequeathed by said ninth clause is to be paid to the persons therein named as trustees, or to the church and town, respectively, in the proportion mentioned, or is to be deemed and treated as part of the "residue;" and

(*c.*) That the true meaning and effect of the twelfth clause of the said will may be declared; and

(*d.*) That it may be determined whether under said twelfth clause, and said act of the legislature, the said residue now belongs to the corporation, or to the individuals to whom the same was devised and bequeathed, or whether the passage of the said act, and adoption of the new name thereunder, were sufficient to defeat the right of the said individuals, but not sufficient, owing to the alleged unconstitutionality, to establish the right of the said corporation, and whether or not therefore the said residue now belongs to the heirs-at-law and next of kin of the said Enoch Pratt, as if he had died intestate.

(*e.*) That the said corporation, "the Trustees of the Sheppard and Enoch Pratt Hospital," and the said alternative residuary devisees and legatees, and also the said heirs-at-law and next of kin of Enoch Pratt, may be required to interplead and adjust their several claims and demands among themselves; and

(*f.*) That in the meantime each and all of the said legatees and devisees and heirs-at-law and next of kin, their and each of their counsel, solicitors, agents and attorneys, may be restrained by the order and injunction of this honorable court, from prosecuting or commencing any action or suit against your orators for or in respect of the several matters aforesaid; and

(*g.*) That your orators may have such other and further relief as their case may in equity require.

May it please your honor to grant unto your orator- the writ of subpœna of the State of Maryland, directed to the said "the Trustees of the Sheppard and Enoch Pratt Hospital," whose office is in the chamber of commerce, in the city of Baltimore, commanding it to appear in this court, on some certain day to be therein named,
and answer the premises, and abide by and perform such
53 orders and decrees as may be passed therein, and also an
order of publication giving notice of the subject and object of this bill to the said Isaac Pratt, Susannah Tobey, Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, J. Lowell Pratt, David G. Pratt, Edmund J. Pratt and Morland L. Pratt, and the Congregational Church and Society of Titicut Parish, North Middleborough, Massachusetts, and the Town of Middleborough, Massachusetts, and warning them and each of them to be and appear in this court in person or by solicitor on or before some certain day, and show cause, if — they have, why the relief prayed should not be granted; and also the writ of injunction, enjoining and restraining the said The Trustees of the Sheppard and Enoch Pratt Hospital, and the said Ellen

J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, J. Lowell Pratt, David G. Pratt, Edmund T. Pratt and Morland L. Pratt and the said Isaac Pratt and Susannah Tobey, and each of them, their and each of their counsel, solicitors, attorneys and agents, from prosecuting or commencing any action or suit against your orators for or in respect to the several matters hereinbefore alleged.

And, as in duty, &c.

JAS. A. GARY,
ARNOLD S. HYDE,
Executors Estate of Enoch Pratt.

BARTON AND WILMER,
Att'ys for Plaintiff-.

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

I hereby certify that on this 9th day of March, in the year eighteen hundred and ninety-eight, before me, the subscriber, a justice of the peace of the State of Maryland, in and for Baltimore city aforesaid, personally appeared James A. Gary and Arnold S. Hyde, the persons who signed the foregoing bill of complaint, and made oath one the Holy Evangely of Almighty God that the matters stated in the foregoing bill are true to the best of *his* knowledge and belief, and that said bill is not filed by the plaintiffs in collusion with any or either of the defendants in the said bill named, but such bill is filed by the plaintiffs of their own accord for relief in this honorable court.

JOHN L. HEBB, *J. P.*

Plaintiffs' Exhibit "A," referred to in the bill of complaint and filed therewith is a copy of Enoch Pratt's last will and testament and is filed in the first case.

Plaintiffs' Exhibit "B," referred to in the bill of complaint
54 and filed therewith is a copy of executors' 1st account and is filed in the first case marked Plaintiffs' Exhibit Examiner "E. P., No. 2," filed with depositions.

Plaintiffs' Exhibit "C," referred to in the bill of complaint and filed therewith is a copy of charter 1853, c. 274, and is filed in the first case, marked Exhibit "A."

Plaintiffs' Exhibit "D," referred to in the bill of complaint and filed therewith is a copy of amendment 1886, c. 9, and is filed in the first case, marked Exhibit "B."

Plaintiffs' Exhibit "E," referred to in the bill of complaint is a copy of amendment 1898, c. 17, and is filed in the first case, marked Exhibit "E."

Plaintiffs' Exhibit "F," referred to in the bill of complaint and filed therewith is a copy of the bill of complaint filed in the first case.

PLAINTIFFS' EXHIBIT G.

(Filed with bill of complaint.)

To James A. Gary and Arnold S. Hyde, executors of the last will and testament of Enoch Pratt, deceased.

GENTLEMEN: As counsel and attorneys for the residuary devisees of the late Enoch Pratt, we hereby notify you that the said devisees claim the residuary estate of the said Enoch Pratt as left by his last will, and notify you not to hand over said residuary estate or any part of it to any other than the said devisees, and more especially not to hand over the same or any part of it to the "Trustees of the Sheppard Asylum," or "the Trustees of the Sheppard and Enoch Pratt Hospital."

And we further notify you that should you transfer any part of said estate to such trustees, that you will be held personally liable for such action.

ABNER McKINLEY,
W. IRVINE CROSS,
Attorneys for Devisees.

PLAINTIFFS' EXHIBIT H.

(Filed with bill of complaint.)

Orphans' Court Appraisement.

Estate of ENOCH PRATT—Personal Property.

22	shares Baltimore Steam Packet Co., at 1,000	$22,000 00
	Balance due the estate at Tivoli, furniture, &c	1,591 50
55	34,000 City of Baltimore 3½ o-o stock, 1928	35,700 00
	266,000 City of Baltimore 3½ o-o stock at 105	279,300 00
8,500	Henderson, N. C., 6 o o bonds at 100	8,500 00
1,100	Newberry, S. C., Township 6 o-o bonds at 100	1,100 00
2,000	Stoney Battery Township 6 o-o bonds at 90	1,800 00
30,000	United States 6 o-o currency bonds at 105	31,500 00
52,000	United States 4 o-o bonds, 1907, at 110	57,200 00
75,000	District of Columbia 3-65 o-o bonds at 109	81,750 00
80,000	Columbia, Newberry & D. R. R. Co.'s 1st-mtge. 6 o-o bonds, 1937, at 60	48,000 00
10,000	Maryland Steel Co. 5 o-o bonds, 1922, at 83	8,300 00
30,000	Consolidated Gas Co., Balto. City, 6 o-o bonds, 1910, at 116	34,800 00
1,000	Belaire, Zanesville & Cincinnati R'y 6 o-o bonds, 1899, at 70	700 00
4,400	Va. Midland R'y Co., 4th series, 1921, at 90	3,960 00
3,000	Southern R'y Co., 1st consol. mtge. 5 o o bonds, 1994, at 90	2,700 00
1,000	Raleigh Water Co. 6 o-o bonds, 1931, at 75	750 00
18,000	Mason & Maxwell Telephone Mfg. Co. 6 o-o bonds of 1905, appraised at 60	10,800 00
3,400	Lombard Investment Co. 6 o-o bonds, city of Omaha, net at 60	3,400 00
11,000	Lombard Investment Co. bonds of Omaha, Neb., at 100	11,000 00
14,000	Lombard Investment Co. 6 o-o bonds, Kansas City, Mo., at 100	14,000 00
9,600	Columbia, Newberry & Lawrens certf. of indebtedness, no present value	
20	Commercial and Farmers' national bank, at 122	2,440 00
106	shares National Mechanics' Bank of Baltimore at 16½	1,749 00
100	Old Town bank at 15½	1,550 00
431	shares Maryland Fire Ins. Co. of Balto. at 5	2,155 00

100 shares Peabody Fire Ins. Co. at 47		4,700 00
200 Balto. & Ohio common stock at 17		3,400 00
118 Balto. & Ohio second preferred stock		4,720 00
1,963 shares Wenstrom Electric Co. of Balto. at 20		39,260 00
25 shares Parkersburg Branch R'y Co. stock at 50		12 50
18 National Lead Co. common stock at 26		468 00
18 National Lead Co. preferred stock at 91		1,638 00
8 shares Penna. Steel Co. common stock at 39		312 00
56 3 shares Penna. Steel Co. pref'd stock at 70		210 00
10 shares Maryland Title Ins. & Trust Co.'s stock at 60		600 00
60 shares Western Union Telegraph Co. at 87		5,220 00
50 shares C. A. Gambrill Mfg. Co. at 75		3,750 00
5 shares Raleigh Gas Co. stock at 75		375 00
2 shares Wilmington, Columbia & Augusta R. R. stock at 106		212 00
5 shares Phila. & Reading R. R., at 20		100 00
34 shares Raleigh & Gaston R. R. Co. at 45		1,530 00
10 shares Raleigh & Augusta Air Line at $1		10 00
85 shares Southern R'y Co. pref'd stock at 30		2,550 00
10,167 shares Locust Point Co. of Balto. City, appraised at		10,167 00
202 shares Consolidated Gas Co. of Balto. City at 63		12,726 00
20 shares Auditorium Co.'s stock at 50		1,000 00
10 shares Home Telephone Co. of Balto. City at 25		250 00
53 shares Central New Jersey Land Improvement Co.		397 50
2 shares American Loan & Trust Co., no present value		.....
80 shares Sciato Water Co., no present value		.....
Mortgage debt (*debt*) Chas. C. McColgan, land on York road		5,000 00
Deposited with Balto. Equitable Surety, for insurance		2,085 00
Promissory note H. Wm. Ellicott, June 1, '95, on demand, with interest $530.36, secured by 250 shares Locust Point Co. of Balto. stock		250 00
50 shares Richmond, North Irvin & Beattysville R'y Co., no present value		.....
$5,000 same railroad bonds, no present value		.....
$3,000 loan to A. M. McPheeters, no present value		.....
Leasehold property S. E. cor. Balto. and Charles Sts., g. rent, $600 per annum		50,000 00
Leasehold property, 202 Buchanan's whf., g. rent, $300 per annum		4,000 00
Houses 1037 and 1039 W. Lexington, and 1030-1034 Vine St., $160 g. r't		3,500 00
House 2105 Oak St., g. rent $122.50 per annum		3,500 00
House 2107 Oak St., g. rent $122.50 per annum		3,500 00
Subground rent cor. Dolphin and McCulloh, $32.76, subject to original g. rent of $178.75		2,383 33
66 shares Lombard Liquidation Co.'s pref'd stock @ 5		330 00
		$834,901 83
57 Brought forward		$834,901 83
Mar. 9th, '98, add (not in first ac.) Horace M. Cake's mortgage on furniture, &c., in Hotel "La Normandie," Washington, D. C.		
Interest added to Sept. 15, '97, bal. to date, Mar. 9, '98		44,853 22
		$879,755 05
Less allowance craved on—		
$18,000 Mason Maxwell Telephone bonds	$10,800	
1,963 shares Western Electric Co. stock	19,630	
10 shares Home Telephone Co.'s stock	200	
5 shares Philada. & Reading R. R. Co.'s stock	100	
		30,730 00
		$849,025 48

As per detailed statement attached to receipts and disbursements ac. "personal:"

March 9th, '98. Cash balance		42,716 48
		$891,741 53
Total	$891,741 53	
Add legacy still unpaid	15,000 00	
	$906,741 53	
Cash personal		$42,716 48
Legacy unpaid		15,000 00
Total cash		$57,716 48

Estate of Enoch Pratt—"Real Property."

Dwelling 201 W. Monument St (subject to Maria Louisa Pratt's life estate)	$50,000 00
710 and 712 Tyson street	2,000 00
Dwelling 602 Park avenue	10,000 00
Warehouse 101 South Charles St	10,000 00
Warehouse 103 South Charles St	8,000 00
Warehouse 116 Commerce St	4,000 00
Warehouse 256-'8-'60-'62 Buchanan's wharf	25,000 00
Property foot of Scott street	7,000 00
¼ interest property Locust point	50,000 00
½ interest Fort Corrington	5,000 00
½ interest lot on Corrington St. (2)	4,000 00
Warehouses 23 and 25 S. Charles St	25,000 00
Rear portion of lot on which building S. E. cor. Balto. and Charles St. is erected	5,000 00
58 Ground rent of $64 on Stricker St.	1,066 67
Ground rent of $83 on Goodman St	1,383 33
Ground rent of $400 on Hughes St	6,666 67
Ground rent of $64 on East Chase St	1,066 66
Ground rent of $160 on East Chase St	2,800 00
Lot on Hargrove alley	100 00
"Tivoli" 9th district Balto. county	40,000 00
"W. D. Miller," farm Balto county	25,100 00
City of Omaha, Neb., lot and improvements (not included in first ac.)	2,000 00
	$285,183 33
Mar. 9th, '98, balance cash on hand	10,903 90
Total	$296,087 23

Balto., March 9th, 1898.

Receipts Estate of Enoch Pratt—"Personal."

BALTO., *March 9th*, 1898.

1897.			
Mar. 27.	Balance due estate (personal) in bonds, &c	$854,626 43	
	And in cash	10,441 22	
			$865,067 65
Ap'l 13.	Rec'd fr. Nat'l Far. and Planters' bank bal. salary as pres't due Mr. E. Pratt		291 67
1898.			
Jan'y 26.	Rec'd fr. Connecticut Nat'l Life Ins. Co. ins. on life of Chas. B. Hatch (in favor of E. Pratt)		521 00
M'ch 3.	Rec'd fr. Lombard Liquidation Co. 65,536 shares *perf'd* stock (div'd on Lombard I. Co.'s bonds)		325 36
	Add Horace M. Cake's mortgage on furniture, &c., in Hotel "La Normandie," Washington, D. C., (bal. due this date, Dec'r 31st, '96)		49,856 99
			$916,062 67

Interest.

1897.			
Ap'l 15.	Rec'd fr. G. M. Sternberg 3 mos.' int. on his note on demand for $16,885.10, @ 5 o-o per annum to 15th instant	$211 06	
May 4.	Rec'd fr. ditto for ditto to May 5th, 1897	46 90	
July 23.	Rec'd fr. Balto. Trust and Guarantee Co., int. on deposit 6, 30, '97, @ 2 o-o	77 25	
59			
Nov'r 16.	Rec'd int. on deferred payment of mtge. note in city of Omaha	1 00	
Dec'r 1.	Rec'd fr. Henderson, Powell & Co., for int. on deposit for extrahazardous risk insurance, whse. 101 S. Charles St	8 00	
1898.			
Jan'y 5.	Rec'd fr. Balto. Trust and Guarantee Co., int. on deposit to Dec'r 31, '97	314 13	
			658 34

Rents.

	Warehouse No. 202 Buchanan's wharf	$557 50	
Do.	S. E. cor. Balto. and Charles St. 10-11th	7,467 08	
	Houses Lexington and Vine Sts	554 71	
Do.	2105 and 2107 Oak St	630 00	
			9,209 29

Ground rents—(Personal).

	G. r't of $321.75 per annum McCulloh St	$281 54	
			281 54

Dividends.

	Commercial and Farmers' Nat'l Bank stock	$120 00	
	National Mechanics' Bank of Balto. stock	95 40	
	Old Town Bank stock	80 00	
	Maryland Fire Ins. Co.'s stock	129 30	
	Peabody Fire Ins. Co.'s of Balto. stock	250 00	
	National Lead stock	112 50	
	Western Union Telegraph Co.'s stock	300 00	
	Raleigh Gas Co.'s stock	* * *	
	Wilmington, Columbia and Augusta R. R. Co.'s stock	12 00	
	Southern R. R. Co.'s stock	85 00	
	Baltimore Steam Packet Co.'s stock	1,320 00	
	Consolidated Gas Co. of Balto. City stock	858 50	
			3,362 70

Interest on bonds.

	City of Baltimore 3½ o-o stock	$10,500 00	
	Town of Henderson, N. C., 6 o-o bonds	510 00	
	Newberry Township, S. C., 6 o-o bonds	66 00	
	Stoney Battery Township, S. C., 6 o-o bonds	120 00	
60	United States 6 o-o currency bonds	1,821 88	
	United States 4 o-o bonds	2,580 00	
	District of Columbia 3 65 bonds	2,737 50	
	Maryland Steel Co.'s 5 o-o bonds	500 00	
	Columbia, Newberry & Laurens R. R. Co.'s 6 o o bonds	2,400 00	
	The Consold. Gas Co. of Balto. City, 6 o-o bonds	1,800 00	
	The Virginia, Midland R. W. Co.'s 4th series bonds	88 00	
	Southern Railway Co.'s 5 o-o bonds	150 00	
	Raleigh Water Co.'s 6 o-o bonds	60 00	
	Mason Maxwell Telephone Mfg. Co.'s 6 o-o bonds	540 00	
			23,873 38
	Mortgage on land on York road	$286 95	
	Mortgage in city of Omaha, Neb., No. 028,597	204 00	
	Mortgage in city of Omaha, Neb., No. 027,683	660 00	
	Mortgage in Kansas City, $14,000, No. 033,230	840 00	
	Mortgage H. M. Cake, on furniture, "La Normandie"	2,931 54	
			4,922 49
	Total		$958,370 41

Interest on mortgage.

Distribution Estate of Enoch Pratt—"Personal."

BALTO., *March 9th*, 1898.

Expense.

1897.			
Ap'l	1.	Paid Jas. D. Slade for wages, &c., "Tivoli" p'r receipt	$99 60
	1.	Paid A. S. Hyde for service to April 1, '97	83 33
	7.	Paid mayor & city council of Balto., water rent for Dec. 10, '96, to March 25, '97, cor. Balto. and Chas. Sts	22 68
	7.	Paid Wm. Dunnett's bill April 1, '97, repairs 1037 W. Lexington St	11 40
	7.	Paid E. Pratt & Bro., bill April 7th, '97, for sundries	5 62
61			
Ap'l	7.	Paid Jas. H. Emory for wages as janitor to Ap'l 3, '97, p'r receipt	10 00
	7.	Paid Lewis Winks' bill March 24, '97, cleaning sink, Vine St	4 50
	30.	Paid Nat'l Far. & Planters' bank expenses on 7o U. S. bonds to N. Y.	12 25
	30.	Consol. Gas Co. bill, April 19, '97, Balto. and Chas. Sts	2 25
	30.	Paid E. Pratt & Bro. bill, Ap'l 30, '97, for sundry expenses	1 39
	30.	Paid P. Walsh & Sons' bill, Ap'l 3, '97, sawdust.	1 50
	30.	Paid Jas. H. Emory for wages as janitor to May 1, '97	20 00
	30.	Paid A. S. Hyde, services to May 1, '97, p'r receipt	83 33
May	1.	Paid Jas. D. Slade for wages, &c., "Tivoli." p'r receipt	99 91
	5.	Paid M. J. Block for services rend. p'r receipt	200 00
	31.	Paid Consol. Gas Co.'s bill, May 17, '97, Balto. and Chas. Sts	25
	31.	Paid E. Pratt & Bro. bill, May 29, '97, for sundry expenses	7 10
	31.	Paid Jas. H. Emory for wages as janitor to June 1, '97	20 00
	31.	Paid Arnold S. Hyde for services to June 1, '97, p'r receipt	83 34
June	1.	Jas. D. Slade for wages "Tivoli" per receipt	105 70
July	1.	Paid Jas D. Slade for wages "Tivoli" per receipt	150 03
	1.	Paid Arnold S. Hyde for services to July 2, '97	83 33
	1.	Paid Jas. H. Emory wages as janitor to June 26, '97	20 00
	1.	Paid Cushing & Co. bill, June 28, '97, for paper.	1 50
	1.	Paid Consol. Gas Co.'s bill, gas June 11, '97.	50
	10.	Paid J. H. Dieterick & Bro. bill, July 1, '97, for "Tivoli"	56 85
	10.	Paid Brooks & Smith bill, July 1, '97, shoeing, "Tivoli"	7 50
	10.	Paid Chas. M. Tastes' bill, July 30, '97, shoeing, "Tivoli"	9 50
	10.	Paid mayor & city council, July 1, '97, water rent, Balto. & Chas. Sts	20 25
62			
	29.	Paid Consol. Gas Co., gas to July 8, '97, Balto. and Chas.	50
	29.	Paid Jas. H. Emory wages as janitor to July 31, '97	25 00
	29.	Paid Arnold S. Hyde, service to Aug. 1, '97	83 34

	29.	Paid E. Pratt & Bro. bill, July 31, '97, for petty expenses	1 81
	31.	Paid Jas. D. Slade for wages, &c., "Tivoli"	160 05
Aug.	16.	Paid Wm. Dunnett's bill, Aug. 10, '97, pumping water out of cellars, 1037 and 1039 W. Lexington St	8 00
Sept.	1.	Paid Consol. Gas Co.'s bill to Aug. 7, '97, Balto. and Chas. Sts.	25
	1.	Paid J. H. Emory wages to Aug. 1, '97, janitor	20 00
	1.	Paid E. Pratt & Bro. bill, Sept. 1, '97, for sundries	2 50
	3.	Paid Jas. D. Slade for wages, &c., "Tivoli," per receipt	111 67
	9.	Paid Arnold S. Hyde, for services to Sept. 1, '97, per receipt	83 33
	30.	Paid Arnold S. Hyde for services to Oct. 1, '97	83 33
	30.	Paid Jas. H. Emory for wages to Oct. 1, '97, janitor	25 00
Oct.	1.	Paid Consol. Gas Co. bill, gas to Sept. 14, '97, B. and Chas. Sts.	50
	1.	Paid Jas. D. Slade for wages, &c., "Tivoli," p'r receipt	131 19
	12.	Paid mayor & city council of Balto., bill, Oct. 8, '97, for water rent, cor. Balto. and Chas. St. June to Sept	20 25
	20.	Paid Consol. Gas Co.'s bill, Oct. 12, '97, for gas B. and Chas. Sts	75
	30.	Paid Balto. American bill, Oct. 29, '97, advertising	2 46
	30.	Paid Balto. Sun's bill, Oct. 29, '97, advertising	3 53
	30.	Paid J. H. Emory for wages to Oct. 30, '97, janitor	20 00
Nov.	1.	Paid A. S. Hyde for services to Nov. 1, '97	83 33
	15.	Paid prem. for ins. $4,000 on warehouse 202 Buchanan's wharf for 1 year to Nov. 16, '98	46 00
Dec.	1.	Consol. Gas Co.'s bill, Nov. 13, '97, Balto. and Chas. Sts	1 00
63			
Dec.	1.	Paid Mercantile Trust & Deposit Co. bill, Dec. 1, '97, for rent of safe for Nov. 1, '97, to Nov. 1, '98	35 00
	1.	Paid J. H. Emory for wages to Dec. 4, '97, as janitor	25 00
	1.	Paid A. S. Hyde for services to Dec. 1, '97, p'r receipt	83 33
	1.	Paid J. H. Slade for wages, &c., "Tivoli," Balto. Co.	119 24
	28.	Paid Consol. Gas Co. bill, Dec. 12, '97, Balto. and Chas. Sts.	4 50
	28.	Paid J. H. Emory for wages to Jan. 1, '98, janitor	20 00
1898.			
Jan.	3.	Paid A. S. Hyde for services to Jan'y 1, '98	83 34
	3.	Paid Jas. D. Slade for wages, &c., "Tivoli," bill Co.	115 39
	10.	Paid mayor & city — of Balto., Jan. 1, '98, for water supplied from Sept. 1, '97, to Dec., '97, cor. Balto. and Chas. Sts.	20 25
	10.	Paid advertising, Baltimore "Sun"	2 35
	31.	Paid Consol. Gas. Co., bill Jan. 24, '98, Balto. and Chas. Sts	4 50
	31.	Paid Wm. J. Upperque, bill Jan. 26, '98, sweeping chimney on Balto. and Chas. Sts.	2 00
	31.	Paid Wm. M. Hatch for services rec'p't Jan'y 28, '98	20 00

	31.	Paid E. Pratt & Bro., bill Jan. 29, '98, petty expenses	3 98	
	31.	Paid J. H. Emory, wages to Jan. 1, '98	20 00	
	31.	Paid A. S. Hyde, services Jan. 3d, '98	83 33	
	31.	Paid J. D. Slade, wages to Jan. 31, '98, "Tivoli"	103 50	
	31.	Paid Fidelity & C. Co., of N. Y., for ins. glass, Balto. and Chas	17 93	
Feb'y	26.	Paid M. & city council of Balto. water rents for 1898 (leasehold)	66 66	
	28.	Paid J. A. Kocks Feb'y 10th, '98, cleaning chimney	1 00	
	28.	Paid Consol. Gas. Co., Feb'y 10, '98, Balto. and Chas. Sts., gas	7 00	
	28.	Paid E. Pratt & Bro., Feb'y 28, '98	2 15	
64				
Feb'y	28.	Paid Jas. H. Emory, 1 mo.'s wages to Feb'y 28, '98	20 00	
	28.	Paid Arnold S. Hyde, for services to Feb'y 28, '98	83 33	
	28.	Paid Jas. D. Slade, for wages to Feb'y 28, '98, "Tovoli"	102 69	
Mar.	3.	Paid Jos. C. Meaking, bill Dec. 9, '97, for "Tivoli"	4 64	
	3.	Paid Bennett Bros., bill March 1, '97, for manure, "Tivoli"	4 00	
	3.	Paid E. Pratt & Bros.' bill March 1, '97, petty expenses	2 00	
				$3,312 50

Repairs.

1897.				
May	31.	Paid Snowden & Co., Mar. 8, '97, Balto. and Chas. Sts	$17 35	
	31.	Paid J. G. Hetzel & Sons, May 14, '97, Lexington and Vine Sts	2 25	
	31.	Paid P. M. Womble, May 19, '97, 202 Buchanan's whf	51 38	
	31.	Paid W. H. Cole & Sons, May 17, '97, 202 Buchanan's whf	1 75	
	31.	Paid Dan'l J. Kraft, labor May 22, '97, 202 Buchanan's whf	13 00	
June	10.	Paid water dep'tm't for turning off water, 2107 Oak St	1 00	
	10.	Paid S. F. Briggs, bill Jan'y 29, '97, for repairs, 2105 Oak St	85	
	10.	Paid Chas. K. Caughey & Co., Feb'y 4, '97, for repairs 2107 Oak St	50	
	10.	Paid S. F. Briggs, Feb'y 5, '97, for repairs 2107 Oak St	25	
	10.	Paid J. M. Watts, Dec. 22, '96, for repairs 2107 Oak St	8 50	
	10.	Paid J. M. Watts, Dec. 22, '96, for repairs 2105 Oak St	13 45	
	10.	Paid M. J. Frederick & Bro., Jan. 1, '97, for repairs 2105 Oak St	67 40	
	10.	Paid C. I. Gildenrfrumpe & Bro., Ap'l 1, '97, for repairs 2105 Oak St	2 33	
	10.	Paid C. I. Gildenfrumpe & Bro., Ap'l 1, '97, for repairs 2107 Oak St	22 68	
	10.	Paid Charlotte Javis, May 29, '97, for repairs 2107 Oak St	1 00	
65				
June	10.	Paid J. A. Stewart & Son, June 1, '97, for repairs 2107 Oak St	85	
	10.	Paid C. I. Gildenfrumpe & Bro., Mar. 1, '97, repairs 2107 Oak St	6 50	

July	1.	Paid E. J. Dowell's bill repairs July 1, '97, Balto. and Chas. Sts	13 74
	1.	Paid E. J. Dowell's bill repairs July 1, '97, houses Vine St	23 22
	1.	Paid E. J. Dowell's bill repairs July 1, '97, houses Lexington St	31 95
	1.	Paid Wm. H. Rothrock, bill repairs May 24, '97, Balto. and Chas. Sts	10 59
	10.	Paid Jno. Cavans' bill repairs May 1, '97, 2107 Oak St	23 65
	10.	Paid J. G. Valiant & Co., bill repairs May 1, '97, 2107 Oak St	20 00
Oct.	1.	Paid Wm. Dunnett's bill Sept. 30, 97, repairs 1039 W. Lexington	8 33
	30.	Paid J. H. Dennis, papering Oct. 15, '97, Vine St	3 00
	30.	Paid Wallace Stebbins, rep'g boiler, Sept. 30, '97, B. and Chas. Sts	1 00
Nov.	8.	Paid Wm. Dennetts, rep'g range, Lexington St., Nov. 1, '97	8 35
	8.	Paid J. H. Dennis, rep'g ceiling Lexington St., Nov. 5, '97	1 00
Dec'r	3.	Paid W. H. Rothrock, bill Nov. 13, '97, plumbing, B. and Chas. Sts	1 30
	3.	Paid Snowden & C. Mfg. Co., Oct. 8, '97, water indicator, B. & Chas. Sts	2 10
	3.	Paid J. G. Hetzell, Nov. 23, '97, rep'g gutter, 1030 Vine St	1 00
	3.	Paid E. J. Dowell, Nov. 27, '97, repairs Lexington St. house	32 01
	3.	Paid E. J. Dowell, Nov. 27, '97, repairs Vine St. house	15 61
	3.	Paid Wallace Stebbins, prop'n 10-11 bill Nov. 8, '97, radiato- B. and C. Sts	45 45
	28.	Paid Geo. T. Roche & Son, 10-11 prop'n bill Dec. 1, '97, frescoing B. and C. Sts	38 18
66			
Dec'r	28.	Paid Geo. T. Roche & Son, bill Dec. 1, '97, glazing 1034 Vine St	1 40
	28.	Paid Jno. A. Stewart & Sons, rep'g clock 1037 W. Lexington St	2 90
	28.	Paid Wallace Stebbins, grate for boiler, B. & Chas. Sts	13 18
	28.	Paid Wallace Stebbins, work B. & Chas. Sts	80
1898.			
Jan'y	7.	Paid Wm. Rothrock, bill Dec. 3, '97, W. closet, B. and Chas. Sts	2 15
	7.	Paid Wm. Rothrock, bill Dec'r 3, '97, gas leak, B. and Chas. Sts	1 17
	7.	Paid Wallace Stebbins, bill rep'g boiler, B. and Chas. Sts	70
	7.	Paid Snowden & C. Mfg. Co., Dec. 31, '97, elevator B. and Chas. Sts	3 00
	8.	Paid sundry bill of repairs on houses, No. 2105 and 2107 Oak St., as per H'y W. Rogers's ac. rend. Jan'y 7th, '98	315 52
Feb'y	28.	Paid Wm. Dunnett's bill Feb'y 18, '98, for plumbing, Lexington St	2 13
	28.	Paid mayor and C. C., bill Jan'y 31, '98, rep'g meter, Balto. and Chas. St	2 00
	28.	Paid Wm. H. Rothrock's bill Jan'y 31, '98, for plumbing, Balto. and Chas. Sts	2 46
Mar.	3.	Paid Geo. Knipp & Bro., bill Jan'y 20, '98, for plumbing ac. H. W. Rogers, 3, 2, '98	2 25
	3.	Paid Rob't Hughes, bill May 7, '98, ac. H. W. Rogers, 3, 2, '98	3 16
			848 34

Court fees.

1897.
June 29. Paid circuit court No. 2, bill of complaint costs, case of Jas. A. Gary, &c., *vs.* Anna F. Carson, &c 31 00

67

Taxes.

1897.
July 29. Paid State and city taxes for 1897, as per bills... $1,920 12
1898.
July 12. Paid State and city taxes for 1897, as per bill... 184 24
2,104 36

Funeral expenses.

1897.
July 10. Paid Hugh Sissons & Sons, bill for cutting inscription on monument 15 00

Collateral taxes.

1897.
Sept. 22. Paid collateral taxes 2½ o-o of $268,183.33, the amount of appraisement of the real estate as per inventory rendered Dec. 30, '96, $283,183.33, less the life estate of Mrs. Pratt, $15,000, in fee-simple, lot and improvements, cor. Park Ave. and Monument St.... ..... $6,704 58
22. Paid collateral taxes 2½ o-o on $854,626.43, the amount of residue, personal estate (stocks and bonds) as per executors' acc't rendered March 27, 1897..... 21,365 67
28,070 25

Ground rents.

1897.
Mar. 27. Paid Seaton Schroeder's d'ft, March 25, '97, Light St., for 6 mos.' ground rent of $600.00 per annum, on lot S. E. corner Balto. & Charles Sts., due Mar. 25, '97 ..... 300 00
May 4. Paid for 6 mos.' ground rent of $80.00 per annum, lot on 1137 Lexington St., due May 1, '97. ... 40 00
July 1. Paid for 6 mos.' ground rent of $80.00 per annum, lot 1039 W. Lexington St., due May 1, '97.... 40 00
15. Paid for 6 mos.' ground rent of $300.00 per annum, on lot 202 Buchanan's wharf, due July 15, 1897 ..... 150 00

68

Sept. 9. Paid for 6 mos.' ground rent of $178.75 per annum, on lot on McCulloh St., due Sept. 1, 1897..... 89 38
9. Paid for 6 mos.' ground rent of $122.50 per annum, on lot. No. 2105 Oak St., due Sept. 1, 1897..... 61 25
9. Paid for 6 mos.' ground rent of $122.50 per annum, on lot No. 2107 Oak St., due Sept. 1, 1897..... 61 25
Oct. 12. Paid for 6 mos.' ground rent of $600.00 per annum, lot cor. Balto. and Chas. Sts., due Sept. 25, '98 ..... 300 00
Nov. 3. Paid for 6 mos.' ground rent of $80.00 per annum, on lot No. 1037 W. Lexington St., due Nov. 1, '97..... 40 00
1898.
Jan'y 17. Paid for 6 mos.' ground rent of $80.00 per annum, on lot No. 1039 W. Lexington St., due Nov. 1, '97..... 40 00
18. Paid for 6 mos.' ground rent, $300.00 per annum, on lot No. 202 Buchanan's wharf, due Jan'y 15, '98..... 150 00

M'ch	2. Paid for 6 mos.' ground rent of $178.75 per annum, on lot on McCulloh St., due March 1, 1898	89 38	
	3. Paid for 6 mos.' ground rent of $122.50 per annum, on lot 2105 Oak St., due 3, 1, '98	61 25	
	3. Paid for 6 mos.' ground rent of $122.50 per annum, on lot 2105 Oak St., due 3, 1, '98	61 25	
			1,483 76
			$35,865 21

And then crave allowance for the following lapses and shrinkages:

On $1,000 Wilmington & Weldon R. R. Co.'s bonds	$1 67	
On $2,000 Northern Pacific R. R. Co.'s bond	22 00	
		33 67
		$35,898 88
On $18,000 Mason Maxwell Telephone Mfg. Co. 6 o-o bonds of 1905, appraised @ 60, failed, total loss; no assets	$10,800 00	
69 On $1,963 shares Western Electric Co.'s stock, over appraised $10.00 per share	19,630 00	
On 10 shares Home Telephone Co. stock, in hands of receiver, over appraised $20.00 per share	200 00	
On 5 shares Phila. & Reading R. R. stock, this is old stock and no present value, appraised in error as new stock, &c	100 00	
		30,730 00
		$66,628 88

Recapitulation.

Inventory and receipts		$958,370 41
Disbursements	$35,865 21	
Losses	33 67	
		35,898 88
		$922,471 53
Allowances craved on stocks and bonds		30,730 00
		$891,741 53

Receipts Estate of Enoch Pratt—"Real."

BALTIMORE, *March 9th*, 1898.

1897.			
Mar. 27.	Amount of inventory—real		$283,183 33
	Lot and improvements city of Omaha, Neb. (not included in first ac.)		2,000 00
			$285,183 33

Rents.

House 1602 Park avenue	$750 00	
Houses 712 and 714 Tyson street	243 20	
Warehouses 23 and 25 S. Charles street	1,650 00	
Warehouse 101 S. Charles street	1,166 69	
Warehouse 103 S. Charles street	786 50	
Warehouse 116 Commerce street	300 01	
Warehouses 256-'58-'60-'62 Buchanan's whf	3,750 00	
Warehouse S. E. cor. Balto. and Charles Sts. 1-11th	1,083 80	
Locust Point property	7,772 38	
Property on Scott street	722 69	
Tivoli, Balto. Co	774 34	
Property in city of Omaha, Nebraska	417 65	
		19,417 26

70

Ground rents.

G. rent $64 p'r annm., Stricker St	$128 00	
G. rent $168 p'r annm., Chase St	252 00	
G. rent $64 p'r annm., Chase St	96 00	
G. rent $400 p'r annm., Hughes St	600 00	
G. rent $83 p'r annm., Charles St	84 25	
		1,160 25

Repairs.

Rec'd from insurance on pier No. — Locust Point, damaged by fire		60 82
Total		$305,821 66

Disbursements Estate of Enoch Pratt—"Real."

BALTIMORE, *March 9th*, 1898.

Repairs.

1896.			
Oct.	16.	Paid for repairs on Omaha property p'r ac	$1 25
	19.	Paid ½ of bill of claim for chute L. Pt. wharves	16 93
	19.	Paid ½ bill lumber Locust Point wharves	68 80
	19.	Paid ½ bill blacksmith-work for Locust Point wharves	9 61
	19.	Paid ½ bill labor on blacksmith-work p'r E. Pratt & Bros. ac	105 12
	20.	Paid J. F. Curley's bill Oct. 19, repairs, Scott St	60
	20.	Paid L. Lendenking Oct. 10, repairs, Scott St	4 23
Nov'r	3.	Paid L. Lendenking Oct. 29, plumbing, Scott St.	3 65
	3.	Paid W. F. Bidderson Oct. 31, papering, Scott St.	2 75
	3.	Paid J. F. Curley Nov. 2, for lock, Scott St	20
	10.	Paid ½ labor for repairs Locust Point wharves per ac	133 07
	25.	Paid P. Walsh & Sons, lumber Tivoli, Balto. Co.	18 63
	25.	Paid J. F. Curley Nov. 23, for Scott St. houses	50
Dec.	8.	Paid W. H. Rothrock Sept. 25, plumbing, Tivoli, Balto. Co	3 41
71			
Dec.	8.	Paid W. H. Rothrock Nov. 25, plumbing, Balto. & Chas. Sts	2 55
	8.	Paid W. H. Rothrock Dec. 2, plumbing, Lombard & Chas. Sts	10 02
	8.	Paid W. H. Rothrock Dec. 5, plumbing, Lombard and Chas. Sts	22 30
	8.	Paid Thos. C. Basshor & Co. Oct. 22, rep'g boiler, Balto. & Chas. Sts	41
	8.	Paid J. F. Curley Dec. 7, repairs, Scott St	10
	8.	Paid ½ labor, &c., repairs on wharves, Locust Pt. per ac	62 50
	8.	Paid Wallace Stebbins Dec. 18, for boiler, cor. Balto. & Chas. Sts	33 52
	29.	Paid W. F. Biddison Dec. 22, for papering, Scott St	5 00
1897.			
Jan'y	4.	Paid E. J. Dowell's bill Dec. 10, repairs Buchanan's wharf	85 16
	4.	Paid E. J. Dowell's bill Dec. 10, repairs, Scott St. houses	18 22
	4.	Paid E. J. Dowell's bill Dec. 10, repairs, 23 & 25 S. Charles	1 85
	4.	Paid E. J. Dowell's bill Dec. 10, repairs, Tyson St	11 72
	4.	Paid E. J. Dowell's bill Dec. 10, repairs, Balto and Charles Sts	19 18
	12.	Paid ½ labor and repairs on whf. L. Pt. p'r ac rend. Dec. 31, '96	81 03
	14.	Paid Wallace Stebbins' bill repairs, cor. Balto. & Charles	51

	21.	Paid repairs on Omaha property p'r ac	24 15
	27.	Paid Geo. I. Roche & Sons' bill Dec. 31, Balto. and Charles.	1 48
	27.	Paid Geo. I. Roche & Sons' bill Jan. 1st, 1337 Scott St	1 08
	27.	Paid Philip Walsh & Sons' bill Jan. 4th, lumber for Tivoli	11 00
72			
Feb'y	12.	Paid ½ labor and repairs wharves L. Pt. to 1, 30, '97, p'r rec'pt	50 74
	15.	Paid J. F. Curley's bill of repairs, Jan. 18, '97, Scott St	1 34
	27.	Paid Wallace Stebbins' bill, 1, 18, '97. cor. Balto. and Chas	49
	27.	Paid Wallace Stebbins' bill, 1, 28, '97, cor. Balto. and Chas	52
	27.	Paid W. H. Rothrock, bill 1, 27, '97, cor. Balto. and Chas	2 33
Mar.	20.	Paid C. I. Stewart & Sons' bill 3, 29, '97, 25 S. Charles	1 50
	20.	Paid J. G. Hetzell & Sons' bill 3, 20, '97, Buchanan's whf.	25 55
	20.	Paid C. J. Dowell's bill 3, 12, '97, Scott St	3 00
	20.	Paid J. H. Dennis' bill 3, 12, '97, Scott St	18 14
Ap'l	13.	Paid ½ labor repairs Locust Pt. whf., p'r ac. Mar. 31, '97	552 66
	19.	Paid for repairs on Omaha property	2 35
May	12.	Paid E. Pratt & Bro. for ½ labor and repairs whf. Locust Pt	216 74
	31.	Paid W. A. Gault's bill Ap'l 30, '97, repairs "Tivoli"	10 76
	31.	Paid J. G. Hetzell & Sons' bill, May 14, '97, repairs Tyson St	5 70
	31.	Paid J. G. Hetzell & Sons' bill, May 14, '97, repairs 23 and 25 S. Chas. St	13 55
	31.	Paid J. G. Hetzell & Sons' bill, May 14, '97, repairs Scott St	37 20
June	10.	Paid E. Pratt & Bro., for ½ labor and repairs whfs. L. Pt., per ac	82 74
July	1.	Paid Wm. Dunnett's bill June 1, '97, Tyson St	1 20
	1.	Paid J. G. Hetzell & Sons' bill June 1, '97, Buchanan's whf.	6 60
	1.	Paid W. A. Crauston's bill June 25, '97, "Tivoli"	12 50
73			
July	1.	Paid P. Walsh & Sons' bill June 18, '97, "Tivoli"	11 74
	1.	Paid E. J. Dowell's, July 1, '97, 23 & 25 S. Chas. St	2 28
	1.	Paid E. J. Dowell's, July 1, '97, Scott St	92 26
	1.	Paid E. J. Dowell's, July 1, '97, Tyson St	2 20
	12.	Paid E. Pratt & Bro., for ½ labor and repairs whfs. L. Pt. per ac	86 86
Aug.	28.	Paid J. S. Meekin's bill, Aug. 20, '97, "Tivoli,"	15 00
	14.	Paid E. Pratt & Bro. for ½ labor and repairs whfs. L. Pt., p'r ac	159 28
Sept.	14.	Paid J. G. Hetzell & Sons' bill, Aug. 31, '97, for rep'g spouts, &c., Nos. 23 and 25 S. Charles St	10 30
	14.	Paid ditto, spouts and roofs, Scott St	7 35
	21.	Paid E. Pratt & Bro. for ½ labor and repairs whfs. L. Pt., p'r ac	98 07
Oct.	15.	Paid E. Pratt & Bro. for ½ labor and repairs whfs. L. Pt, p'r ac	106 04
	25.	Paid repairs on property city of Omaha, Neb., per Omaha Loan & Trust Co., ac. rend. Oct. 1, '97	15 79
	30.	Paid J. Burke's bill Oct. 6, '97, whitewashing L. & Chas. Sts	3 25

	30.	Paid J. A. Stewart & Sons' bill Oct. 1, '97, rep'g bell, Tyson St	1 50
	30.	Paid J. H. Dennis' bill Oct. 15, '97, papering, Scott St	3 00
	30.	Paid S. Fisher's bill Oct. 16, '97, whitewashing, Tyson	3 00
	30.	Paid E. J. Dowell's bill Oct. 30, '97, painting, &c., Scott St	102 63
Nov.	1.	Paid W. H. Rothrock's bill Oct. 21, '97, gasfitting, L. and Chas. Sts	36 80
	1.	Paid W. H. Rothrock's bill Nov. 2, '97, plumbing, "Tivoli"	4 50
74			
Nov.	10.	Paid E. Pratt & Bro. for ½ labor and repairs whvs. L. Pt	178 49
Dec.	3.	Paid Snowden & C. Mfg. Co.'s bill Oct. 8, '97, elevator, 101 S. Chas	25 95
	3.	Paid W. H. Rothrock's bill Nov. 10, '97, plumbing, "Tivoli"	10 77
	3.	Paid W. H. Cole & Son, bill Nov. 15, '97, nails, "Tivoli"	4 40
	3.	Paid J. G. Hetzell & Sons' bill Nov. 23, '97, rep'g spouting, 103 S. Chas	1 65
	3.	Paid J. G. Hetzell & Sons' bill Nov. 23, '97, rep'g spouting, Tyson St	75
	3.	Paid J. G. Hetzell & Sons' bill Nov. 23, '97, rep'g roof, &c., 101 S. Chas	39 46
	3.	Paid Bartlett, Hayward & Co., do., Oct. 8, '97, vault, Light St	9 40
	3.	Paid E. J. Dowell's bill Nov. 27, '97, rep'g chimney, &c., Chas	17 07
	3.	Paid E. J. Dowell's bill Nov. 27, '97, rep'g Buchanan's whf	4 85
	3.	Paid E. J. Dowell's bill Nov. 27, '97, rep'g 23 S. Chas St	70
	3.	Paid E. J. Dowell's bill Nov. 27, '97, rep'g 714 Tyson St	17 89
	3.	Paid E. J. Dowell's bill Nov. 27, '97, rep'g Scott St	191 41
	3.	Paid Wallace Stebbins' 1/11th prop'n bill, 11, 8, '97, register, B. and Chas	4 55
	3.	Paid P. Walsh & Sons' bill Nov. 26, '97, lumber, "Tivoli"	149 26
	4.	Paid W. A. Crauston's bill Dec. 3, '97, carpenter's w'k, "Tivoli"	88 12
	11.	Paid E. Pratt & Bro. ½ labor and repairs, whvs., L. Pt., Dec. 11, '97	158 20
	28.	Paid G. I. Roche & Son, 1/11th prop'n bill Dec. 1, '97, frescoing, cor. Balto. and Chas	3 82
75			
Dec.	28.	Paid ditto, bill Dec. 1, '97, painting, 101 S. Chas. St	53 00
	28.	Paid ditto, bill Dec. 1, '97, painting, Tyson St	26 00
1898.			
Jan.	18.	Paid E. Pratt & Bro., ½ labor and repairs, whvs. L. point, per ac. Jan. 18, '98	317 66
	24.	Paid repairs on property, city of Omaha, Neb., per Omaha Loan & Trust Co.'s ac. rend. Jan'y 1, '98	12 04
	31.	Paid J. H. Dennis' bill Jan. 21, '98, papering, Scott St	3 00
	31.	Paid D. M. Campbell, bill Jan. 21, '98, painting, "Tivoli"	18 00
	31.	Paid P. Walsh & Sons' bill Jan. 24, '98, lumber, "Tivoli"	2 71

Feb'y	10.	Paid E. Pratt & Bro. ½ labor and repairs on whfs. L. point, per ac. Feb. 10	69 46	
	28.	Paid J. H. Dennis' bill Feb'y 12, '98, papering, Scott St.	3 00	
				$3,979 60
		Expenses.		
1896.				
Sept.	22.	Paid collector's commissions on rents	50	
	30.	Paid collector's commissions on rents	50	
Oct.	6.	Paid collector's commissions 1.60, and for ejectment, .90	2 50	
	12.	Paid collector's commissions .40, and for ejectment, .90	1 30	
	16.	Paid Omaha Loan and Trust Co., commissions, p'r ac.	3 05	
	20.	Paid J. F. Curley, commissions collecting rents	1 23	
Dec.	18.	Paid G. H. Baylies' bill Dec'r 5, '96, feed, "Tivoli".	3 65	
	18.	Paid A. L. Boggs, Jr., & Co., bill Dec'r 5, '96, feed, "Tivoli"	19 20	
1897.				
Jan'y	9.	Paid C. H. Taste's bill Dec'r 5, '96, horseshoeing, &c., "Tivoli"	10 10	
March	20.	Paid S. Townsend & Sons' bill Mar. 17, '97, clover seed, "Tivoli"	7 65	
76				
March	20.	Paid J. H. Baylies' bill Mar. 2, '97, corn, "Tivoli".	3 50	
	20.	Paid Bennett Bros.' bill Feb'y 28, '97, manure, "Tivoli"	12 00	
	20.	Paid P. Walsh & Sons' bill Feb'y 25, '97, sawdust, "Tivoli"	1 50	
Ap'l	7.	Paid H. Denley's bill Feb'y 3, 27, '97, prof. services, "Tivoli"	5 00	
	7.	Paid C. M. Tate's bill 3, 24, '97, horseshoeing, &c., "Tivoli"	9 00	
	7.	Paid J. H. Livingston's bill 3, 25, '97, oats, &c., "Tivoli"	18 96	
	13.	Paid E. Pratt & Bro., ½ superintendence, &c., whfs. L. Pt. ac., 3, 31, '97	30 99	
	16.	Paid M. W. Offutt's bill for prof. services	125 00	
May	12.	Paid E. Pratt & Bro., prop'n ½ supt., &c., whvs. Locust point	24 57	
June	10.	Paid E. Pratt & Bro., prop'n ½ supt., &c., whvs. Locust point	28 65	
July	1.	Paid G. H. Baylies' bill June 4, '97, corn, "Tivoli".	3 50	
	1.	Paid Bennett Bros., June 1, '97, manure, "Tivoli".	9 00	
	12.	Paid E. Pratt & Bro., prop'n ½ supt., &c. whvs. L. point	28 64	
Aug.	14.	Paid E. Pratt & Bro., prop'n ½ supt., &c., whvs. L. point	28 65	
Sept.	9.	Paid E. Stabler, Jr., & Co., bill Aug. 2, 97, manure, "Tivoli"	23 00	
	14.	Paid L. Mink's bill Sept. 7, '97, cleaning sink, Scott St.	9 00	
	21.	Paid E. Pratt & Bro., prop'n ½ supt., &c., whvs. L. Pt., p'r ac.	28 65	
Oct.	1.	Balto. Seed & Imp. Co.'s bill seed and impl'ts, Sept. 3, '97, for "Tivoli," Balto. Co	26 22	
	4.	Paid Bennett Bros.' bill Oct. 1, '97, timothy seed.	5 08	
	15.	Paid E. Pratt & Bro., prop'n ½ supt., &c., whvs. Locust Pt	28 65	
77				
Oct.	30.	Paid Brooks & Smith bill Oct. 7, '97, horseshoeing, "Tivoli"	8 75	
	30.	Paid E. Pratt & Bro., bill Oct. 30, '97, cor. Lombard and Chas	5 00	

Nov.	3.	Paid J. Lance, Jr., bill, Nov. 1, '97, for commissions for rental of whvs. S. E. cor. Lombard & Charles Sts	76 88	
	10.	Paid E. Pratt & Bro., proportion ½ for supt., &c., whvs. Locust point	28 64	
Dec.	11.	Paid E. Pratt & Bro., proportion ½ for supt., &c., whvs. Locust point	28 65	
1898.				
Jan'y	7.	Paid Brooks & Smith bill Jan'y 1, '98, horseshoeing at "Tivoli"	12 75	
	7.	Paid Bennett Bros.' bill Dec'r 31, '97, manure, "Tivoli"	4 00	
	18.	Paid E. Pratt & Bro. for ½ comms. for supt., &c., per ac. Jan'y 18, '98	28 64	
	31.	Paid E. Stabler, Jr., & Co. bill Jan'y 22, '98, for manure, "Tivoli"	13 00	
Feb'y	10.	Paid E. Pratt & Bro. for ½ commrs. for supt. &c., per ac. Feb'y 10	28 64	
				740 19

Water rents.

1896.				
Octo.	8.	Paid for cor. Balto. and Charles Sts.	$4 31	
1897.				
Jan'y	4.	Paid for ditto	2 95	
	27.	Paid for ½ cor. Charles and Lombard	6 48	
Feb'y	23.	Paid for houses 712 and 714 Tyson St	9 50	
	23.	Paid for warehouses 23 and 25 S. Charles St	9 50	
	23.	Paid for 1313, '19, '21, '23, '25, '27, '29, '31 Scott St.	22 80	
	23.	Paid for warehouse 103 S. Charles St	9 50	
	23.	Paid for warehouse 101 S. Charles St	7 60	
	23.	Paid for 116 Commerce St	7 60	
78				
Ap'l	29.	Paid for water rent, 6 mos., to July 1, '97, Omaha property, per ac. rendered	11 40	
May	31.	Paid for water rent (bill April 31, 1897), for 1896, 101 S. Charles St	2 03	
July	31.	Paid for water rent on Omaha property	11 40	
1898.				
Feb'y	26.	Paid for mayor and city council of Balto., bill for water rents for 1898 (real)	66 50	
				171 57

Taxes.

1896.				
Oct.	16.	On Omaha property per ac	$20 29	
1897.				
Jan'y	21.	Do. do. do.	11 68	
Ap'l	19.	Do. do. do.	43 42	
June	1.	State and county taxes for 1897, on land 13th district	218 25	
	1.	State and county taxes for 1897 on "Tivoli" impts.	580 86	
July	21.	State and city taxes for 1897 on L. Pt. and Ft. Covington property	1,416 25	
	28.	State and city taxes for 1897 on realty	2,161 67	
	31.	On Omaha property p'r ac. $65.49 and $25.38	90 87	
				4,543 29

Insurance.

1896.				
Sept.	28.	Paid ins. for $14,000 on buildings "Tivoli" for five years to September 27th, 1901	140 00	
Oct.	16.	Paid ins. on Omaha property per ac	21 80	
Dec'r	15.	Paid Mutual Fire Ins. Co. of Balto. Co., int. on premn. note for ins. of $1,525 on Nizer dwelling and outbuildings "Tivoli," from Mar. 1, '97, to Jan'y 1, '98	4 90	

1897.
April 23. Paid ins. of $12,800 on ½ interest in wharves, offices and warehouse Locust point for one year to April 14th, 1898 ..... 127 20
79
Dec. 17. Paid Mutual Fire Ins. of Balto. Co., ints. on premn. note for ins. of $1,525 on Nizer dwelling and outbuildings "Tivoli" from Jan'y 1st, '98, to Jan'y 1st, '99, policy No. 17268 ..... 5 88
299 78

$9,734 43

Recapitulation.

Inventory and receipts $305,821 66
Disbursements 9,734 43

$296,087 23

BALTO., *March 9th*, 1898.

Payments Made on Securities, &c., Since the Last Account Rendered.

Estate of Enoch Pratt.

Balto. Equitable Society, ret'd part deposit $40 00
Stock in Central New Jersey Land & Imp. Co., in liquidation 79 50
Mortgage, land on York road, paid on ac 2,000 00
Mortgage, Horace M. Cake, "La Normandie," Washington, per ac 5,003 77

$7,123 27

Geo. M. Sternberg's note, Aug. 15, '96, on demand, paid in full May 4, '97 ..... 16,885 10
Wilmington & Weldon R. R. Co. 7 o-o bond, called 1,000 00
"Furniture, &c., Tivoli," sale of one heifer 25 00

$25,033 37

Subpœna issued for resident defendants, and returned "Summoned."

80 *Demurrer of the Defendant "The Trustees of the Sheppard and Enoch Pratt Hospital."*

(Filed 18th March, 1898.)

JAMES A. GARY and ARNOLD S. HYDE, Exe'tr's of the Will of Enoch Pratt,
vs.
THE TRUSTEES OF THE SHEPPARD and Enoch Pratt Hospital, a Corporation; David G. Pratt and Gerard C. Tobey, Trustees; Congregational Church and Society of Titicut Parish, North Middleborough, Mass.; Town of Middleborough, Massachusetts; Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, J. Lowell Pratt, David G. Pratt, Edmund L. Pratt, Morland L. Pratt, Isaac Pratt, and Susannah Tobey.
} In the Circuit Court No. 2, Baltimore City.

The defendant, "The Trustees of the Sheppard and Enoch Pratt Hospital," demurs to the whole bill, upon the following grounds, viz:

1. Because the said plaintiffs have not in and by their said bill shown any right and title whatsoever to compel this defendant and David G. Pratt, Gerard C. Tobey, Trustees Congregational Church and Society of Titicut Parish, North Middleborough, Massachusetts, Town of Middleborough, Massachusetts, Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, J. Lowell Pratt, David G. Pratt, Edmund T. Pratt, Morland T. Pratt, Isaac Pratt and Susannah Tobey, the other said defendants to the said bill to interplead.

2. Because the said plaintiffs have not stated in their bill such a case as entitles them to any relief in equity against this defendant.

And therefore, and for other good causes of demurrer in the said bill contained, this defendant doth demand the judgment of this honorable court, whether it shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained; and prays to be hence dismissed with its reasonable costs in this behalf sustained.

WM. PINKNEY WHITE,
WILLIS & HORNER,
Sol'rs for the Trustees of the Sheppard and Enoch Pratt Hospital.

81 STATE OF MARYLAND, *City of Baltimore*, } *sct:*

On this 17th day of March, 1898, before the subscriber a justice of the peace of the State of Maryland, in and for the city of Baltimore aforesaid, personally appeared George A. Pope, the president of "the Trustees of the Sheppard and Enoch Pratt Hospital," and made affirmation in due form of law that the demurrer filed in this case by "the Trustees of the Sheppard and Enoch Pratt Hospital" is not intended for delay.

JOHN L. HEBB, *J. P.*

21st March, 1898.—Order of publication issued for non-resident defendants was filed in said cause, and copy issued for publication.

Separate Answer of Ellen J. O. Phinney and Other Defendants.

(Filed 6th May, 1898.)

JAMES A. GARY and ARNOLD S. HYDE, Executors of the Will of Enoch Pratt, Deceased,	
vs.	In the Circuit Court No. 2 of Baltimore City.
THE TRUSTEES OF THE SHEPPARD and Enoch Pratt Hospital, a Corporation; David G. Pratt and Gerard C. Tobey, Trustees, and Others.	

To the honorable the judge of said court:

The separate answer of Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, David G. Pratt, Edmund T. Pratt and Morland L. Pratt, respectfully shows unto your honor:

1. That the said defendants are the niece and nephews of the late Enoch Pratt, deceased, mentioned in his will and in the bill of complaint filed in this case as residuary legatees along with Isaac Lowell Pratt, who has died since the decease of said Enoch Pratt and prior to the filing of the bill in this case.

2. That the said defendants admit the facts set forth in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th clauses in said bill.

3. As to the 12th clause of said bill, these defendants deny that the therein-mentioned Isaac Pratt, brother of said Enoch
82 Pratt and the said Susannah Tobey, the sister of said Enoch Pratt as heirs and next of kin*d* of said Enoch Pratt are contingently interested at all in the said estate, as these defendants maintain and aver that they themselves, along with the children and representatives of the said Isaac Lowell Pratt, deceased, are the residuary legatees and devisees under the said will, and as such entitled to all the residue of the estate of said Enoch Pratt, deceased, as named in his said will, and to any devises and legacies in said will that may have lapsed or are invalid for any reason.

4. To the averments in the 13th paragraph of said bill that the said plaintiffs as executors of said Enoch Pratt are unable to decide between the said conflicting claimants, and cannot safely recognize their said conflicting claims, these defendants deny that said executors will be in any danger, but aver that their safe and proper course is to pay over the whole residue of said estate to these defendants, along with the heirs and representatives of the said Isaac Lowell Pratt, deceased.

5. As to the 14th paragraph of said bill, these defendants deny that said executors cannot proceed in the administration and winding up of said estate without the guidance and direction of some court of competent jurisdiction and can be protected only by this honorable court from the twofold liability which threatens them from the conflicting claims of the said legatees and devisees and the heirs and next of kin of the said testator.

6. And furthermore, these defendants show unto your honor that by section 2, of the act incorporating said corporation, the Trustees of the Sheppard Asylum, the object and design of said corporation is declared to be simply "the founding and maintaining an asylum for the insane." And that it was never limited in its purpose to the treatment of indigent insane persons, or the conducting of a free or partially free establishment, and the conducting or managing of any such eleemosynary operations while not forbidden by its charter, would not be any part of the distinct object for which said corporation was chartered and would not embrace the full scope of its charter power.

And further, they show that when the charter for said corporation was secured by Moses Sheppard, no power to conduct an eleemosynary institution was asked for therein, but on the other hand, such action was not forbidden in said charter, the said trustees being authorized simply to conduct an institution for the treatment of the insane and the conducting of a free hospital, or the gratuitious

treatment of indigent patients, if within the powers granted to said corporation would be only one limited part of its functions.

7. And these defendants further show unto your honor, that while the conducting of a free hospital was not forbidden by the charter of said corporation, it was distinctly contrary to the desire and purpose of the said Moses Sheppard who endowed the
83 institution managed by said trustees, and that said Moses Sheppard left carefully written instructions to his trustees to show that he expressly desired that the institution for which he had procured the charter and to which he left his fortune, should not be a charity hospital, or an establishment for the indigent insane, but an institution distinctively different in character.

In a letter to the trustees of said corporation, under date of January 16, 1855, which letter is in the hands of said trustees, the said Moses Sheppard uses the following expression:

"My leading purpose is to found an institution to carry forward and improve the ameliorated system of treatment of the insane irrespectively of expense."

And again in the same letter:

"My desire is for a small and expensive institution. I mean that each patient shall have an attendant when it may appear useful—an experimental establishment."

And again in the same letter:

"It is my desire that this institution should be kept separate and distinct from any one similar in character, now being or hereafter to be erected by the State or in any other way."

Clearly showing that in establishing an institution for the treatment of the insane, he not only did not desire to establish an eleemosynary institution, but that he relied on its limited funds to keep it from becoming such, and desired to prevent said trustees from procuring elsewhere the funds that would be necessary to the maintenance of a charitable institution for the indigent alone, having in mind the temptation that the managers of such institutions are subject to, of violating and evading the desires and purposes of their founders, in order to establish large, ostentatious, charitable institutions.

And these defendants further show unto your honor that the institution inaugurated under said charter has been either from respect for the desires of said founder, or from the necessities of the case, relied on by him, conducted and managed in accordance with the desires of the said Moses Sheppard, and that the said Enoch Pratt was well acquainted with what he calls in his will:

"The operations and management or the working of said asylum as now existing and being carried on,"

And that the said

"Operations and management or the working of said asylum as now existing and being carried on."

Have been and were so known to the said Enoch Pratt to be not at all the operations or working of a charitable, nor has the furnishing free treatment or treatment at low price or treatment for the indigent

insane as such been even a feature of the working and operation of said establishment, the free treatment has not been a
84 feature at all; few, if any patients having been gratuitously treated, patients have paid according to the accommodation and treatment they could afford to pay for; many of them paying large amounts and securing for themselves special and luxurious accommodations during their stay in said institution.

And these defendants show unto your honor that the said Enoch Pratt, in the gift to said institution, did not desire to have his estate applied to the general uses of the said corporation, and still less to the operation and working of an institution as now being carried on, but had a special object in his donation as distinct from the general purpose of the said corporation, and in leaving one minor matter to the judgment of said trustees, says that it is to be managed as the said trustees "may deem best and wisest to promote *the object of this donation;*" and that the said object as distinguished from the object of the institution, was the gratuitous or semi-gratuitous care of the indigent insane; and that the said Enoch Pratt in his said will leaves his said residuary estate to said trustees upon an especial trust, that the income to be used after the completing of certain grounds and buildings, for the care of what he calls the indigent insane, which trusts these defendants aver is at law invalid and void because of its indefiniteness.

These defendants further show that the said Enoch Pratt in his will, before providing for the application of the income of his estate to the care of the indigent insane, creates a special trust in the said trustees to apply the income of said estate to the completing the present building and grounds, and the erection of such other buildings or building as will accommodate not less than two hundred additional inmates; and it is not until after the completion of these that the income from said estate is to be applied to the care of the indigent insane. And these defendants are instructed, and so aver, that said trust attempts to create a perpetuity by postponing the vesting of the absolute control of said estate for a time longer than that allowed by the laws of this State, and that said devise and bequest to said trustees of the said Sheppard and Enoch Pratt Hospital is therefore totally invalid and void at law, and that for reasons set forth in this paragraph and the preceding one, the whole of said residuary estate has vested in these defendants along with the heirs and representatives of the said Isaac Lowell Pratt, under the residuary clause in the will of said Enoch Pratt.

9. And these defendants are informed, and therefore charge, that it was not in the power of the Trustees of the said Sheppard Asylum to enter into the bargain mentioned in the will of the said Enoch Pratt, or to agree to an alteration of the name of the corporation as chartered by the State, and endowed by the said Moses Sheppard for the purpose of securing the devise and legacy of the said Enoch Pratt, the said name of said institution having been given by an express contract between the State of Maryland and the said Moses Shep-
pard, and the preserving of said name being an express
85 part of the contract, whereby said devise and legacy were left to the said institution, and that there was no power in

the legislature of Maryland to make such a change of name, because any law so changing the name of said corporation would be a law impairing the obligation of a contract, and therefore a violation of section ten, of article one of the Constitution of the United States, and more especially so when made in aid of a bargain of this kind, and that the said act of the legislature of 1898, is therefore, and for other reasons, unconstitutional and void, and the rest and residue of said estate of Enoch Pratt has therefore, under the will of the said Enoch Pratt, vested in these defendants, and it is therefore the duty of the said plaintiffs in this case to transfer said estate to these respondents along with the heirs and representatives of the said Isaac Lowell Pratt, as required by the will of said Enoch Pratt, deceased.

And these defendants deny that there is any right or title in any of the other parties mentioned in said bill to any part of the said residuary estate.

And they therefore ask that the bill filed by said plaintiffs may be dismissed with costs to these defendants.

And, as in duty, etc.

ABNER McKINLEY,
E. J. D. CROSS,
Sol'rs for Def'ts.

Separate Answer of Isaac Pratt, Jr., and Susannah K. Tobey, Defendants.

(Filed 6th May, 1898.)

JAMES A. GARY and ARNOLD S. HYDE, Executors of the Will of Enoch Pratt, Deceased,
vs.
THE TRUSTEES OF THE SHEPPARD AND Enoch Pratt Hospital, a Corporation, *et al.*
} In the Circuit Court No. 2 of Baltimore City.

To the honorable the judge of said court:

The separate answer of Isaac Pratt, Jr., and Susannah K. Tobey to the bill of complaint filed by the plaintiffs in this cause respectfully shows unto your honor:

1. That the said defendants admit the averments of the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th paragraphs of the said bill filed by the plaintiffs in this cause.

2. As to the 13th paragraph of said plaintiffs' bill, these defendants deny that the said plaintiffs cannot safely recog-
86 nize either of the conflicting claims made to said estate; but aver that for the reasons hereinafter set forth the whole of the said residuary estate which is the subject of controversy and any devises or legacies that may have failed or proven void belong unto these said defendants as the heirs and next of kin of said Enoch Pratt, deceased; and they deny the averments in the fourteenth paragraph of said bill, that the said executors are unable to

proceed in the distribution and winding up of said estate without the guidance of some court of competent jurisdiction, and can be protected only by this honorable court from the twofold liability which threatens them, and aver that they, the said defendants, are the rightful owners of said estate, and that it is the duty of the said executors to transfer the same to these said defendants as the heirs and next of kin of the said Enoch Pratt.

3. These defendants further show unto your honor, that the Trustees of the Sheppard Asylum, mentioned in the bill of complaint, were a corporation chartered by the State of Maryland at the desire of one Moses Sheppard who proposed to leave to it the bulk of his estate, and subsequently did so, and that by section 2 of the act incorporating said corporation, its object and design is declared to be simply "the founding and maintaining an asylum for the insane," and it was never intended that the institution to be founded under said charter should be an institution limited to the treatment of indigent patients, or an eleemosynary institution at all. The gratuitous, or partly gratuitous treatment, of the indigent was not made the general object of the corporation, nor mentioned among its powers or duties, so that under charter of said institution the conducting of an establishment for the gratuitous, or partly gratuitous, treatment or indigent patients, even if not distinctly *ultra vires* was foreign to the object of said corporation as stated in its charter, and, if covered by its powers at all, was certainly not its sole duty or object.

4. And these defendants further show unto your honor, that while the conducting of an eleemosynary institution was neither expressly authorized nor expressly forbidden in the charter of said institution, the said Moses Sheppard, by whom alone the said institution was endowed, distinctly desired that it should not be an institution of that character, and in a letter to the trustees of said corporation under date of January 16th, 1855 (which letter is in the hands of said trustees and cannot therefore be filed by your orators), the said Moses Sheppard uses the following expressions:

"My leading purpose is to found an institution to carry forward and improve the ameliorated system of treatment of the insane, *irrespective of expense.*"

And again: "My desire is for a small and expensive institution. I mean, that each patient shall have an attendant when it may appear useful. An experimental establishment."

87 And again: "It is my desire that this institution should be kept separate and distinct from any one of a similar character now being or hereafter to be erected by the State or in any other way."

Thus showing that he not only did not desire to establish an eleemosynary institution, but that he relied on its limited funds to keep it from becoming such, and desired to prevent said trustees from procuring elsewhere the funds that would be necessary to the maintenance of a large institution or a charitable institution for the indigent insane alone, neither of which were desired by him.

And these defendants further show unto your honor, that up to

the time when the last will and testament of the said Enoch Pratt was made, and since then the institution has been carried on upon the lines laid down by the said Moses Sheppard's directions, either in deference to his desire or because the limited funds of the institution secured the carrying out of his wishes as he hoped, and the institution is a comparatively small and expensive one treating few patients at a time and having somewhat the character of a home, not only has it not been conducted exclusively for the free treatment or treatment at low rates of the indigent insane, but the free treatment of indigent patients has not been a feature at all. Patients have paid according to the accommodation and treatment they could afford to pay for. It has been in no sense a low-priced institution; wealthy men suffering from temporary mental troubles as the result from dissipation have stayed in said institution paying high rates, and enjoying all the comforts of home. The said institution is well known as a pay institution and not a charity, and the said Enoch Pratt, when alluding in his will to "the operations and management or working of the said asylum as now existing and being carried on," was well aware that the said management, working and operations were those of an institution conducted not on charitable but on commercial principles, and not having for its main object the free care of the indigent.

And these defendants further show unto your honor that the residuary devise of said Enoch Pratt was not meant by him to be given to the said institution to be used generally for the objects of its charter, but to be used as a special donation for the furnishing of charitable treatment to indigent insane, and that the said Enoch Pratt, in his will, when leaving to the trustees the discretion to furnish treatment at low charges, or absolutely free, does not leave it to their judgment as they may deem best and wisest for the good of the institution or the carrying out of its charter purposes, but specifically says as they "may deem best and wisest to promote the object of this donation," thus showing that he was not leaving this estate simply for the use of the corporation as such, but that said donation had a specific object of its own.

And they further show that the said Enoch Pratt, in his said will, expressly disclaims any purpose to alter what he calls
88 "the operations and management or the working of the said asylum as now existing and being carried on," and then proceeds to require that the fund left by him shall be devoted to the erection of certain buildings and the accommodation and treatment of the indigent insane, thus distinctly stating that while he did not desire that the present operation of the institution as a small and expensive establishment at high prices should be altered, that he required that the fund left by him should be used separately for the care of the indigent insane.

5. And these defendants are instructed and believe and so aver, that the said devise and legacy is utterly invalid and void, for the reason that it attempts to create a trust in favor of a class of beneficiaries—the indigent insane—too indefinite to ask the enforcement

of said trust in their favor, and that said trust is too indefinite to be enforced by the courts.

6. And the said defendants further show unto your honor that the said residuary devise and legacy to said corporation, the Trustees of the Sheppard Asylum, while it creates a trust under which the income from the said residuary estate shall be devoted mainly to the care of the indigent insane, postpones the vesting of said trust until after the present buildings and grounds shall be completed from said income, and such other building or buildings as will accommodate not less than two hundred additional inmates shall be erected out of said income, a period indefinitely remote, thus creating a perpetuity and postponing the vesting of said trust for the care of the indigent insane to a period beyond that allowed by the laws of this State.

These defendants, therefore, aver that the whole of said residuary devise and legacy is utterly invalid and void for the reasons set forth in this paragraph and the one that precedes it, and the said residuary estate therefore remains undisposed of by the will of said Enoch Pratt, and the right and title thereto has vested in these defendants as the heirs and next of kin of said Enoch Pratt, and that no other of the parties named as defendants has any title or right to said residuary estate or any part thereof, and that the said plaintiffs should, without further delay, transfer the same unto these defendants, and that the said plaintiffs are not entitled unto the relief prayed for in their bill.

And these defendants pray that the said bill may be dismissed with costs to said defendants.

W. IRVINE CROSS,
Sol'r for Isaac Pratt, Jr., and Susannah K. Tobey, Defendants.

Certificate of publication of order of publication for non-resident defendants filed.

89 *Bill of Complaint and for Injunction and Receiver.*

(Filed 12th March, 1898.)

THE TRUSTEES OF THE SHEPPARD and Enoch Pratt Hospital *vs.* JAMES A. GARY and ARNOLD S. Hyde, Executors of the Last Will and Testament of Enoch Pratt, Deceased.	In the Circuit Court No. 2 of Baltimore City.

To the Honorable George M. Sharp, judge of the said circuit court:

Your orator complaining, says:

First. That your orator is a corporation created and existing under the laws of the State of Maryland. By its original charter, passed by the General Assembly of Maryland as an act of the said General Assembly of Maryland, at its January session, A. D. 1853, and the amendment thereto passed at the January session of the

General Assembly of Maryland, A. D. 1886, chapter 9, — was, and is now, under the additional amendment of its said charter provided by the act of the General Assembly of Maryland, at its January session, A. D. 1898, chapter 17, able and capable in law to acquire and hold property, real, personal and mixed, by gifts, devise or purchase, as will appear from an inspection of the said act of assembly of 1853, chapter 274, and of the said amendment enacted in the acts of the General Assembly of Maryland of 1886, chapter 9, reference to which acts is hereby made as though the same were literally incorporated herein, copies whereof are filed herewith marked "Plaintiff's Exhibits 1 and 2," and prayed to be taken as part of this, the plaintiff's bill of complaint.

Second. That Enoch Pratt, late of Baltimore city, deceased, died on or about the 17th day of September, 1896, leaving a last will and testament with a codicil thereto, duly executed agreeably to the laws of the State of Maryland to pass title to real and personal property thereunder, in this State.

Third. That the said will and codicil were duly admitted to probate by the orphans' court of Baltimore city, and are now of record in the office of the register of wills of said city, in "Wills" Liber T. W. M., No. 76, folio 537, &c.; and on the 26th day of September, 1896, letters testamentary thereon were duly granted by the orphans' court of Baltimore city aforesaid, to the defendants herein named, James A. Gary and Arnold S. Hyde (Maria Louisa Pratt having been named in said last will as one of the executors thereof,
90 having renounced her rights as such); all of which will fully appear by reference to certified copies of said last will and codicil and the probate and of the letters testamentary, herewith filed as part hereof, marked "Plaintiff's Exhibit, A and B."

Fourth. That the said James A. Gary and Arnold S. Hyde as such executors, entered upon the duties of the said office, and have passed one administration account in said court, whereby it appears from the administration account so passed on the 27th day of March, 1897, that all of the debts of the testator, which have come to the knowledge of the said executors, after due notice to creditors by publication as required by law, have been paid, and that they have paid or secured the payment to the proper parties of all of the cash specific legacies in said will mentioned; and that a distribution of the balance of the estate then in their hands amounting to nearly $900,000.00, which constitutes a large part of the residuary estate of their said testator as directed (*as directed*) by the residuary clause of his said will, is now ready to be made, as being due and owing at this time to the residuary legatee and devisee named in said last will; and your orator prays leave to file hereafter, certain copies of the said administration account showing that the debts of the testator and the legacies by his last will and testament and codicil thereto, bequeathed, have been fully paid and secured or satisfied.

Fifth. That by the residuary clause of the said will, the testator devises and bequeaths the residue of his estate as follows:

"Having in my lifetime liberally provided for my niece and nephew hereunder named, I do now hereby give, devise and be-

queath all the rest and residue and remainder of my estate of every kind and description, whether real, personal or mixed and wherever the same may be situate, of which I may die possessed or be in any way entitled to at the time of my death after the payment of all debts justly due by me, and after satisfying all the devises and bequests hereinbefore set forth to the 'Trustees of the Sheppard Asylum,' a corporation already incorporated by the General Assembly of the State of Maryland by said name, style and title, and its successors forever; it being my intention and meaning to make said corporation, the 'Trustees of the Sheppard Asylum,' the residuary devisee and legatee of and under this my last will and testament. And I direct my executors to set over, transfer and convey by proper deeds, assignments and transfers, the said residue of my estate to the said corporation upon and subject however to the following condition and bargain, namely: that the said trustees shall adopt as the name and style of said corporation, the title of the 'Trustees of the Sheppard and Enoch Pratt Hospital,' and shall obtain at the first session of the General Assembly of Maryland, after my death, an amendment to their charter authorizing the said change of title, and adopting the said name of the 'Trustees of the Sheppard and Enoch Pratt Hospital,' as the future title of said corporation.

91 "While I do not wish to alter the operations and management, or the revoking of the said asylum, as now existing and being carried on, it is my wish and will that the income from my said residuary estate shall be used to complete the present buildings and grounds, and for the erection of such other buildings, or building as will accommodate not less than two hundred additional inmates, and after that, the income from my aforegoing donation shall be devoted mainly to the care of the indigent insane in the most advisable manner *at very low charges*, or absolutely *free* as the trustees of said corporation, in the exercise of their best judgment as to the rate to be charged may deem best and wisest to promote the object of the donation; provided however, and it is expressly my will, that in case the said Trustees of the Sheppard Asylum fail to obtain from the General Assembly of Maryland, at its first session after my death, the amendment to the charter of said institution hereinbefore stipulated and provided for, and fail to adopt the name for said corporation of the 'Trustees of the Sheppard and Enoch Pratt Hospital,' then, and in that case it is my will, and I then give, devise and bequeath (in lieu of the aforegoing provision) the said residue of my estate to my niece, Ellen J. O. Phinney and to my nephews, Gerard C. Tobey, Horace Tobey, J. Lowell Pratt, David G. Pratt, Edmund T. Pratt and Mortland L. Pratt, to be in that case set apart for and equally divided among them and the issue *per stirpes* of any of them who may be dead at the time of my decease, such issue to take the share to which its or their parent would if living have been entitled.

"I direct my executor, until it shall have been decided as above provided, whether the said condition of my aforegoing devise and bequest of said residue will be performed, that is to say, whether the

said corporation will obtain authority as aforesaid to change its title, and will in fact adopt the title above designated, to keep all buildings and improvements on my property insured and in good order and condition, and pay all charges and taxes thereon, and collect the rents and income on said residue of my estate, and to invest the said net income in Baltimore City stock, the same to be added to and constitute a part of the said residuary estate."

Sixth. That your orator in the performance of the condition of the aforesaid devise and bequest did obtain from the General Assembly of the State of Maryland at its present January session, 1898, which is the first session held by the said General Assembly of Maryland after the death of the said Enoch Pratt, an amendment to its charter authorizing the change of title and adopting the name as suggested in the said will of "the Trustees of the Sheppard and Enoch Pratt Hospital" as the future title of said corporation; all of which will more fully appear from the act of the General Assembly aforesaid, approved March 2d, 1898, and known as "chapter 17, of the Acts of 1898," of which a duly certified copy is herewith filed and marked "Plaintiff's Exhibit C" which it is prayed may be taken as a part of this bill of complaint.

92 Seventh. That subsequently to the approval of the said act of the General Assembly by the governor of the State of Maryland, that is to say, on the third day of March, 1898, the board of trustees of the said Sheppard asylum duly met and adopted a resolution duly accepting the said amendment to the said charter of said corporation, and adopted the name "the Trustees of the Sheppard and Enoch Pratt Hospital," for said corporation, of which resolution a copy is herewith filed as part hereof, marked "Plaintiff's Exhibit D."

Eighth. That of the residu-m of the estate of the said Enoch Pratt, passing under the residuary clause of his said last will and testament and codicil thereto, a considerable amount consists of lands and real estate, situated in the city of Baltimore and in Baltimore county, an inventory whereof has been by the executors of said last will of Enoch Pratt, returned to the orphans' court of Baltimore city, for the purpose of ascertaining the value thereof, with the view of paying unto the State of Maryland the collateral inheritance tax thereon, from which appraisement it will appear that the value of said real estate passing under said residuary clause of said last will, after deducting therefrom the property devised by the testator unto his widow, Maria Louisa Pratt for life, amounts to the sum of $233,183.33; a schedule of which said property giving the locations and dimensions thereof, together with the appraised value thereof as represented by said inventory is filed herewith as part hereof, marked "Plaintiff's Exhibit E."

Ninth. That a considerable portion of the real estate passing under the residuary clause of the last will and testament and codicil thereto of the late Enoch Pratt consists of ground-rent annuities issuing out of lots of ground situated in the city of Baltimore, which ground-rent annuities are becoming due and payable at the stated times and amounts as by reference to said last-mentioned exhibit

will more fully appear, and that a large portion of the real estate left by the testator passing under the residuary clause of his said last will and codicil thereto, located in the city of Baltimore and in Baltimore county, is improved by large and valuable warehouses, wharf and residential buildings of great value.

Tenth. That the said Enoch Pratt by his said will did direct his executors until such time as the Sheppard asylum should obtain authority from the legislature of Maryland at its first session after the death of the testator, Enoch Pratt, to change its title and until such time as it, the said Sheppard asylum should in fact adopt the title designated in the said last will of the said testator, in the twelfth clause thereof, to keep all buildings and improvements on his property insured and in good order and condition, and pay all charges and taxes thereon and collect the rents and income on said residue of his estate and to invest the said net income in Baltimore City stock, the same to be added to and constitute a part of his residuary estate.

93 Eleventh. That your orator has been authorized by the General Assembly of Maryland, at its first session next succeeding the death of the said Enoch Pratt, by the act of the General Assembly of Maryland hereinbefore referred to, to — change its title and to adopt the name of " the Trustees of the Sheppard and Enoch Pratt Hospital," as by the terms of his said last will and testament provided, and by the resolution passed at the meeting of the Trustees of the Sheppard Asylum has in fact adopted the title in pursuance of the said act of the General Assembly of Maryland designated in the last will and testament of the testator, and is thereby, in pursuance of the provisions of the said last will and testament and codicil thereto of the said Enoch Pratt, deceased, entitled under the provisions thereof, and is of right seized of the real estate passing thereunder and entitled to the legal possession and beneficial interest in the personal estate passing thereunder.

Twelfth. And your orator avers and charges that although the Trustees of the Sheppard Asylum have performed the sole condition precedent to their right to become seized of and entitled to the right of possession to all of the real estate passing under the residuary clause of the said last will and testament of the said Enoch Pratt, by in fact first being authorized by the General Assembly as aforesaid, to change its title in conformity with the provisions of the last will and testament of the said Enoch Pratt, and having in fact adopted the name of " the Trustees of the Sheppard and Enoch Pratt Hospital," and although by virtue of the terms of said last will and testament, the executors thereof are no longer entitled to the possession of or control over said real estate, or the rents, issues and profits thereof, nor to the management thereof, nevertheless in violation of the provisions and the terms of said last will, and in prejudice to the rights, interests and estates of your orator in and to said real estate, the said executors of said last will and testament continue to claim the right to the possession and management of, and control over said real estate; and your orator further avers and charges that the said executors allege in justification of their refusing to deliver the pos-

session of said real estate unto your orator and persisting in the collection of the rents, issues and profits thereof, and continuing in the management and control thereof, that they have been notified not to recognize the rights of, or to transfer the property and residuary estate to you- orator, as residuary legatee and devisee under said last will and testament and codicil thereto; and further, "that it is a fact *that* public notori-ty that when the bill authorizing the aforesaid change of name, (to wit, from the Trustees of the Sheppard Asylum to 'the Trustees of the Sheppard and Enoch Pratt Hospital') was presented to the legislature it was promptly and vigorously opposed both by argument before the committee to which it was referred and by publications in the newspapers on the ground among others, that the condition so imposed by the testator involved an unlawful change, not only in the name but in the objects and purposes of the said corporation, which it was
94 beyond the power of the legislature to authorize and that therefore the said bill, if adopted, would be unconstitutional and of no effect; that some of the members of the legislature who voted in favor of said bill expressly stated as one of their reasons for so doing that the question of its unconstitutionality should properly be left for judicial determination; that when the said bill had been passed by the legislature and was presented to the governor of the State for his approval, the said argument was again repeated and again it was stated that the opposition would not be ended by his approval, but that the questions were of such a nature that they could only be determined by some court of competent jurisdiction."

Thirteenth. That your orator claims to be seized of the real estate hereinbefore mentioned, and insists upon its rights to the possession thereof, and your orator further avers and charges that the defendants in this cause, the executors of said last will and codicil of Enoch Pratt, have no right, title, interest or estate therein.

Fourteenth. Your orator further avers and charges that a considerable portion of the real estate situated in the city of Baltimore and in Baltimore county is improved by valuable buildings erected thereon, which should be protected against loss by fire; that the executors aforesaid, having no legal title in and to the same, or beneficial interest or estate therein either as such executors or otherwise, the policies of insurance upon the improvements thereon against loss by fire, if such loss should occur, could be avoided by the companies to the great loss and irreparable injury to your orator; and your orator further avers and charges that the rents accruing from the said real estate cannot of right be collected by the executors aforesaid, inasmuch as their rights, interests and estates therein, under the provisions of said last will have terminated and ceased by reason of the condition precedent to your orator's rights to become sole devisee under said will has been duly performed and complied with under legislative sanction and authority.

To the end, therefore:

I. That the said James A. Gary and Arnold S. Hyde, executors of the last will and testament and codicil thereto of Enoch Pratt, late

of Baltimore city, deceased, (the defendants herein named) and each of them, their solicitors, attorneys, agent, servants or employees, may, by order of this honorable court, be perpetually enjoined and prohibited from collecting the income, rents, issues and profits thereof and therefrom and from managing or exercising any right or control over the real estate or any part thereof passing under the residuary clause of the last will and testament and codicil thereto of the said Enoch Pratt, deceased.

II. That a receiver may be appointed by an order of this honorable court to take charge and possession of the real estate passing under the residuary clause of said last will and testament and codicil thereto of the said Enoch Pratt, deceased, and manage
95 and protect the same, and to collect the rents, issues and profits thereof and therefrom under the order and supervision of this honorable court.

III. That the said defendants, James A. Gary and Arnold S. Hyde, executors of the last will and testament and codicil thereto of Enoch Pratt, late of Baltimore city, deceased, (the defendants herein named) and each of them, their solicitors, attorneys, agents, servants and employees, may, by an order of this honorable court, be strictly enjoined and prohibited from intermeddling in any manner with the receiver so to be appointed, or with the subject-matter over which he shall be authorized by this honorable court to assume the management of and control over, until the further order of this court.

IV. That the said defendants, James A. Gary and Arnold S. Hyde, executors of the last will and testament and codicil thereto of Enoch Pratt, late of Baltimore city, deceased, may be required to account to this honorable court for all of the rents, issues and profits by them collected or received of or from the real estate passing under the residuary clause of the said last will and testament and codicil of the said Enoch Pratt, late of Baltimore city, deceased, since the third day of March, 1898.

V. And that your orator may have such other and further relief as its case may require.

May it please your honors to grant unto your orator the State's writ of subpœna directed to the said James A. Gary and Arnold S. Hyde, executors of the last will and testament and codicil thereto of the said Enoch Pratt, late of Baltimore city, deceased, commanding them and each of them to be and appear in this honorable court on some day certain to be therein named, to answer under oath the allegations of this bill, and to abide by and perform such order or decree as may be passed in the premises.

And, as in duty, &c.

WM. PINKNEY WHYTE,
WILLIS & HORNER,
Sol'rs for Pl'ff.

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

I hereby certify that on this, the 12th day of March, in the year eighteen hundred and ninety-eight, before me, the subscriber, a justice of the peace of the State of Maryland, in and for the city aforesaid, personally appeared George A. Pope, president of the Trustees of the Sheppard and Enoch Pratt Hospital, and made affirmation in due form of law that the matters and facts set forth and contained in the aforegoing bill of complaint are true as therein stated, to the best of his knowledge and belief.

ANDREW J. COLLARS, *J. P.*

96 Plaintiffs' Exhibit- Nos. 1 and 2, referred to in the bill of complaint and filed therewith, are copies of charter and amendment as filed in the first case, marked Exhibits "A" and "B."

Plaintiffs' Exhibit "A," referred to in the bill of complaint and filed therewith, is a copy of the last will and testament, &c., of Enoch Pratt, as filed in the first case.

Plaintiffs' Exhibit "B," referred to in the bill of complaint and filed therewith, is a copy of letters testamentary, as filed in the first case, marked Exhibit "C."

Plaintiffs' Exhibit "C," referred to in the bill of complaint and filed therewith is a copy of amendment of 1898, c. 17, as filed in the first case, marked Exhibit "E."

Plaintiffs' Exhibit "D," referred to in the bill of complaint and filed therewith, is a copy of resolution of board, as filed in the first case, marked Exhibit "F."

PLAINTIFFS' EXHIBIT "E."

(Filed with bill of complaint.)

A certain lot of ground in the city of Baltimore, beginning for the same at the corner formed by the intersection of the west side of Park street and the south side of Monument street, fronting on the south side of Monument street about thirty feet, with a depth of about one hundred and twenty-five feet to an alley; and also all that lot of ground in the city of Baltimore, beginning on the south side of Monument street about thirty feet westerly from Park street fronting on the south side of Monument street about sixty feet with a depth of about one hundred and twenty-five feet to an alley. A. W. B., 367–242.

And also all that tract of ground in the city of Baltimore, beginning on the south side of Monument street about ninety feet westerly from Park street, fronting on said first-mentioned street about nine feet with a depth to an alley known as "K" alley; together with the improvements thereon, being four-story brick dwelling and stable, No. 201, corner Monument and Park streets. A. W. B., 367–242. G. E. S., 240–147. $50,000

The fee simple lots and improvements on Park avenue and Monument street bequeathed to Mrs. Maria Louisa Pratt, widow of the

testator, for life, and appraised at $50,000, the value of Mrs. Pratt's life estate is deducted from said appraisement and reducing the value of the inventory from $283,183.33 to $268,183.33.

A certain lot of ground in the city of Baltimore, beginning for the same on the west side of Tyson street, formerly called "Lerew's alley" at the distance of one hundred and ninety-two feet northerly from Monument street, fronting on said first-mentioned
97 street about twenty-five feet with a depth of about sixty feet. Together with the improvements thereon, being two two-story and attic brick houses, Nos. 712 and 714 Tyson street. A. W. B., No. 421–388. $2,000.00

A certain lot of ground in the city of Baltimore, beginning at the distance of twenty-two and eight-twelfths feet northwesterly from the corner formed by the intersection of the southwest side of Park avenue and the northwest side of McMechin street, fronting on Park avenue about twenty one and seven-twelfths feet with a depth of about one hundred and thirty feet to an alley. Together with the improvements thereon, being a three-story brick and marble house, No. 602 Park avenue. F. A. P., 825–88. F. A. P., 865–435. $10,000.00

A certain lot of ground in the city of Baltimore, beginning at the corner formed by the intersection of the south side of Lombard street with the east side of Charles street about eighteen feet with a depth of about sixty feet. Together with the improvements thereon, being a five-story brick warehouse, No. 101 South Charles street. G. R., 471–485. $10,000.00

A certain lot of ground in the city of Baltimore, beginning for the same at the north corner of lot No. 37, running thence bounding on Charles street south about twenty-four feet with a depth of about seventy feet. Together with the improvements thereon, being a four-story brick warehouse, No. 103 South Charles street. E. D., 107–300. $8,000.00

A certain lot of ground in the city of Baltimore, beginning on the west side of Commerce street about two hundred and eighty-five feet southerly from the south side of Lombard street, fronting on Commerce street about twenty feet with a depth of about sixty-five feet. Together with the improvements thereon, being a three-story brick warehouse No. 116 Commerce street. G. R., 610–380; R. T. A., 683–39. $4,000.00

A certain lot of ground in the city of Baltimore, beginning on the west side of Frederick street, or Buchanan's wharf, about seven hundred and twelve feet south of Pratt street, fronting on said first-mentioned street one hundred and two feet, with a depth of about seventy feet to an alley. Together with the improvements thereon, being four four-story brick warehouses No. 256, 258, 260 and 262 Buchanan's wharf, F. A. P., 859–195. $25,000.00

A certain lot of ground in the city of Baltimore, beginning on the east side of Scott street about thirty-eight feet northerly from the corner formed by the intersection of the north side of Ostend street (if opened) with the east side of Scott street; thence northerly bounding on the east side of Scott street about four hundred

and five feet to the northernmost point of the property owned by the grantor; thence south forty-seven and one-half degrees east two hundred and twenty feet to a point where the east side of South Paca street (if opened) would intersect said south forty-seven and one-half degrees east line; thence southerly bounding on
98 said line, being a continuation of what would be the east side of South Paca street two hundred and five feet to a point where said line would intersect the east side of an alley twelve and five-twelfths feet wide; thence southerly bounding on said alley ninety-two and two-twelfths feet to a point where a line drawn easterly at right angles to Scott street from the place of beginning would intersect the east side of said alley; thence reversing said line to the place of beginning. Together with the improvements thereon, being eight two-story brick houses with one story back buildings, Nos. 1313, 1319, 1321, 1323, 1325, 1327, 1329, 1331 Scott street, and two annuities or annual ground rents of thirty-three dollars each, issuing and arising out of said property on houses Nos. 1315 and 1317 Scott street. J. B., 1251–65. $7,000.00

An undivided one-half interest in a certain lot of ground in the city of Baltimore on the south side of the basin, called "Locust point." Beginning for the same at a point formed by the intersection of a line drawn southeasterly along the center of Cox street and a line drawn northeasterly along the center of Towson street and running thence south twenty-seven degrees west bounding along the center of Towson street four hundred and sixty-five and one-half feet to intersect a line drawn southeasterly along the center of Nicholson street; and thence bounding along the center of Nicholson street south sixty-three degrees east four hundred and seventeen and one-half feet to a line drawn northeasterly along the center of Andre street; thence north seventy-two degrees east ninety feet or thereabouts to the angle or intersection of the port warden's line formed by a line drawn north sixty-three degrees west parallel with Nicholson street one hundred feet; north twenty-seven degrees east from the southwesternmost side of Nicholson street with a line drawn south twenty-seven degrees west parallel to Andre street at the distance of one hundred feet; south sixty-three degrees east from the northwest side of Andrew street; then bounding on the port warden's line and parallel to Andrew street north twenty-seven degrees east five hundred and thirty three and one-half feet from the northeastern extremity of the port warden's line; thence still with the port warden's line and parallel with Cox street north sixty-three degrees west four hundred and seventeen and eight-twelfths feet; and thence south seventy-three degrees west ninety feet to the beginning. Together with the improvements thereon, being three wooden coal piers and one frame storage warehouse. A. W. B., 219 and 221. $50,000.00

All that lot, piece or parcel of ground situate, lying and being in the Baltimore county (now city) being part of a tract of land called "Upton court," whereon a battery hath lately been erected. Beginning for the same at a stone planted in a ditch and running thence south forty-five degrees west nineteen perches to another

stone; thence south forty-five degrees east twenty-five and one-quarter perches to Patapsco river; thence running with and bounding on said river north thirty-three degrees east twenty perches to intersect a line drawn south forty-five degrees east from the
99 place of beginning; and then reversing the said line so drawn and bounding thereon to the place of beginning, laid out for and said to contain two and three-quarters acres of land; unimproved. G. R., 409–276. $5,000.00

A certain lot of ground in the city of Baltimore, beginning for the same at the intersection of a line drawn along the centre of Winder street, and a line along the centre of Covington street; thence with said last-mentioned line southerly until it intersects a line drawn along the centre of Gould street; thence with said last-mentioned line southwesterly along the middle line of Gould street to intersect a line drawn along the middle of Donaldson street; thence westerly along the middle line of Donaldson street to the middle of an alley twenty feet wide drawn parallel to Covington street, and one hundred and twenty feet westwardly therefrom; thence northerly along the middle of said alley to the middle of Winder street; thence along the middle of Winder street eastwardly to the place of beginning; unimproved. G. R., 739–404. $4,000.00

A certain lot of ground in the city of Baltimore, beginning on the east side of Charles street about three hundred and sixty-five feet south from Baltimore street, fronting on said first-mentioned street about forty-five feet with a depth of about one hundred and ninety-three and ten and one half twelfths feet, together with the improvements thereon, being two four-story brick warehouses, and one-story brick warehouse Nos. 23 and 25 South Charles street. L. K., 298–139. A. W. B., 357–178. J. B., 1534–445. $25,000.00

A certain lot of ground in the city of Baltimore, beginning on the east side of South Charles street, about fifty-one and nine-twelfths feet south of Baltimore street, fronting on said first-mentioned street about thirteen feet with a depth of thirty-two feet six inches, being the rear portion of lot on which the building No. 1 East Baltimore street is erected. G. R., 680–463. $5,000.00

An annuity or annual ground rent of eighty-three dollars issuing and arising out of a certain lot of ground in the city of Baltimore, beginning on the west side of Goodman street extended about three hundred and eighty feet southerly from Montgomery street fronting on said first-mentioned street about 60 feet with a depth of about one hundred and twenty feet; improved. A. W. B., 456–362. $1,383.33

An annuity or annual ground rent of four hundred dollars issuing and arising out of a certain lot of ground in Baltimore city, beginning on the north side of Hughes or Great Hughes street at the southeast corner of Capt. Cotterall's lot fronting on said first-mentioned street about one hundred feet with a depth of about one hundred and fifteen feet to the port warden's line of the basin of Baltimore; improved. E. S., 185–366. $6,666.67

An annuity or annual ground rent of sixty-four dollars issuing and arising out of a lot of ground in the city of Baltimore, beginning

on the north side of Chase street about eighty-four feet east
100 of Central avenue fronting on said first-mentioned street about sixteen feet with a depth of about one hundred feet to an alley; improved. A. M., 286–488. $1,066.66

An annuity or annual ground rent of one hundred and sixty-eight dollars issuing and arising out of a certain lot of ground in the city of Baltimore, beginning at the corner formed by the intersection of the north side of Chase street and the east side of Central avenue fronting on said first-mentioned street about forty-eight feet with a depth of about one hundred feet to an alley; improved. A. M., 286–488. $2,800.00

A certain lot of ground in the city of Baltimore, beginning on the west side of Hargrove alley in the rear of Enoch Pratt branch library, No. 6, fronting on Hargrove alley about seventy feet with a depth of about thirty-six feet. R. O., 1618–172. $100 00

$218,083 33

A certain tract of land in the ninth district of Baltimore county, and known as "Tivoli," described as follows:

All that tract, piece or parcel of land in said county which by deed, bearing date 27th day of November, 1866, and recorded among the land records of Baltimore county, in Liber J. H. L., No. 53, folio 436, was conveyed by Miles White and William Fisher and wife, to Robert Lehr, and said deed is thus described: "All the balance, residue and remainder of that tract or parcel of land situate in Baltimore county, known as part of a tract called "Hale's Discovery," part of a tract called "Knight's addition," and part of a tract called "Sheridan's Discovery" conveyed by David Stewart to Abram B. Patterson and Miles White, by deed dated 28th day of June, 1854, and recorded in Liber H. M. F., No. 9, folio 30, land records of Baltimore county, and in Liber H. M. F., No. 14, folio 19. The said Abram B. Patterson conveyed to said William Fisher his undivided moiety and half part, being all the residue of said tract not heretofore conveyed by said White and Fisher and wife, to Thomas I. Cochran and others, by deeds duly recorded, and being all that portion of said land which lies on the south side of the road leading from the Hillen road to the York turnpike road through said land, containing 40 acres of land, more or less.

Also all that tract of land which by deed dated November 11th, 1861, and recorded in Liber J. H. L., No. 56, folio 410, was conveyed to said Robert Lehr by George C. Irwin, and in which deed is described as follows:

Beginning at the end for the same at the end of thirty-seven and eight-tenths perches on the second line of said land described in a deed from Catherine Dougherty and others, to William Fisher and others, bearing date the 27th day of January, 1859, and run-
101 ning thence with and bounding on part of said line south five degrees west thirty-nine and eight-tenths perches to a stake; thence north eighty-six and one-quarter degrees east fifty-four and one-half perches to the line of Knight's addition; thence

running with and bounding on said line north eight degrees east thirty-nine and one-half perches until it intersects a line drawn north eighty-six and one-quarter degrees east from the place of beginning; thence reversing that line and bounding thereon south eighty-six and one-quarter degrees west fifty-two and one-half perches to the place of beginning. Containing 12 acres, 3 roods and 30 square perches of land, more or less.

Also all that tract of land which by deed dated June 2d, 1868, and recorded in Liber E. H. A., No. 38, folio 441, was conveyed to said Robert Lehr by A. S. Abell, and which is described as follows:

Beginning for the same at a stone heretofore planted as a boundary between the lands of the said Abell and Lehr and running thence north fifty-six and three-quarters degrees east four and nine-tenths perches to a stake; thence north ten and three-quarter- degrees east thirty perches until it intersects the division line between the lands of said Abell and the lands of Lehr; thence running with and bounding on said division line two courses, viz: south thirty-three and one-quarter degrees west nine and two-tenths perches to a stone; south eleven and one-quarter degrees west twenty-five and one-half perches to the place of beginning. Containing ninety square perches of land, more or less.

Also all that tract of land which by deed dated August 20th, 1869, and recorded in Liber E. H., No. 963, folio 337, was conveyed to said Robert Lehr by Seth C. Holmes and William S. Whitely and wife, and described as follows:

Beginning for the same at the end of seventy-seven and six-tenths perches on the second line of the land conveyed by Catherine Dougherty and others to William Fisher and others, by deed dated January 27th, 1859, and running thence with and bounding on said second line south five degrees west twenty-eight and seven-tenths perches to a stone marked "S;" thence running with and bounding on the third line of the land conveyed by the above-mentioned Catherine Dougherty and others, to William Fisher and others; thence south seventy-eight degrees east fifty-three perches to the line of "Knight's addition;" thence running with and bounding on said line north eight degrees east fourty-four perches until it intersects a line drawn north eighty-six and one-quarter degrees east from the place of beginning; thence reversing said line and bounding thereon eighty-six and one-quarter degrees west fifty-four and one-half perches to the place of beginning. (Containing 12 acres, 1 rood and 12 sq. perches of land, more or less.)

Also, all that lot or parcel of ground which by deed dated November 5th, 1859, and recorded in Liber E. H. A., No. 64, folio 197, &c., was conveyed by Robert Lehr *by* Elizabeth C. Nizer and others, and described as follows: Beginning for the same at a stone
102 planted at the southwest corner of Robert Lehr's land and running thence south seven degrees west twenty-three and eight-tenths perches to the centre of the country road leading from the York turnpike road (at Shaw's hill) to the Hillen road; thence along the centre of said county road north sixty-three degrees east thirty-six perches to the outline of the whole land formerly belong-

ing to Elizabeth Nizer, and thence on said outline and bounding on A. S. Abell's land north two and three-quarter degrees east seven and one-half perches; and thence still on the outline of the said Elizabeth G. Nizer's lands and bounding on said Robert Lehr's land south eighty-nine and one-half degrees west twenty-nine and four-tenths perches to the place of beginning. (Containing two acres, 3 roods and twenty square perches of land, more or less.) E. H. A., 68–33.

Also, all that part of a tract of land called "Sheridan's Discovery," and described as follows: Beginning for the same at a stone heretofore planted in the ground and supposed to be at the end of the seventh line of the land conveyed by James Bryan and wife to Elizabeth G. Nizer, by deed dated January 10th, 1842, and recorded among the land records of Baltimore county, in Liber T. K., No. 322, folio 142, and running thence south seven and one-half degrees west fourteen and one-tenth perches to the centre of Arlington avenue; thence running with and bounding on the centre of said avenue south seventy-three degrees west twenty-five perches until it intersects a line drawn southwesterly along the centre of an avenue thirty feet wide; thence reversing said line and bounding thereon north seven degrees east ninety-six and two-tenths perches until it intersects the sixth line of the land conveyed by Brian to said Nizer as above referred to; and thence running with and bounding on part of said line south seventy-eight and one-half degrees east twenty-four and six-tenths perches to a post supposed to stand at the end of said line; thence running with and bounding on the seventh line of said land south eight degrees west fifty-nine and eight-tenths perches to the place of beginning. Containing 13 acres and 30 square perches of land, more or less. E. H. A., 69–416.

Also, all that piece or parcel of land being part of a tract called "Sheridan's Discovery," situate in Baltimore county, and containing 13 and ¼ acres of land, more or less, and more fully described in Liber J. B., No. 85, folio 322, &c., one of the land records of Baltimore county.

Together with the improvements thereon, being a double mansion house, manager's house, farm-house, and outbuildings. Value, $40,000.00

Wm. D. Miller Farm.

A certain tract or parcel of land in Baltimore county: Beginning for the same at a bounded oak tree of Edwin Norwood's land, and running thence bounding on said Norwood's land the three following courses and distances, viz: south forty-eight and one-quarter degrees west forty perches; south seventy-five and one-quarter
103 degrees west twenty-five perches; south fifty-nine degrees west four and one-half perches to a marked chestnut tree; thence still bounding on said Norwood's land and on land now or heretofore owned by Rebecca Smith, wife of Dennis A. Smith, as now surveyed, with one and three-quarter degrees allowance for retrograde variation, south forty-three and one-quarter degrees west

one hundred and twenty-five perches to land sold by J. H. Carter to Reese and Mills and bounding on that land north thirty degrees west twenty-three and one-half perches to the outline of the whole land conveyed by said Carter; and bounding on said land north twelve and one-quarter degrees east fifty-two and three-tenths perches to a stone; thence north fourteen and one-half degrees east twenty-three perches to a stone planted at the corner of a parcel of land conveyed *to* William H. Freeman and others to Frances D. McHenry; thence bounding on that land the two following courses and distances, to wit: North sixty degrees east sixty-three perches to a stake and stone not set up in the centre of the old sulpher-spring road; and thence bounding on the centre of said road north twenty-six and three-quarter degrees *at* east twenty-one and one-half perches to the third line of "Taylor Forrest;" and then bounding on said line and on land now or heretobefore belonging to William Stebbins to the place of beginning. Containing, with a reservation thereon of a certain sand pit of two acres in the conveyance of said land to said William D. Miller particularly mentioned, 249 acres 3 roods and 22 perches of land, more or less. J. H. L. 13–308.

Also all that tract or certain lot of land in Baltimore county, known as "sand pit lot;" said lot containing two acres more or less (being the same sand pit referred to in J. H. L., 43–308), being surrounded by a plot of land containing 249 acres, 3 roods and 22 perches, conveyed by James H. Carter and wife, of Baltimore, Maryland, to William D. Miller, by deed dated December 29th, 1849, and recorded among the land records of Baltimore county, in Liber A. W. B., No. 425, folio 529, E. H. A. 74–282. Together with the improvements thereon being (no improvements). $25,100 00

$283,183 33

Subpœna issued as prayed; "summoned *omnes*."

Order for Injunction and Receiver.

(Filed 12th March, 1898.)

THE TRUSTEES OF THE SHEPPARD AND Enoch Pratt Hospital *vs.* JAMES A. GARY and ARNOLD S. HYDE, Executors, &c.	In the Circuit Court No. 2 of Baltimore City, January Term, 1898.

104 On the foregoing bill of exhibits it is this twelfth day of March, 1898, ordered that William Pinkney Whyte be and he is hereby appointed receiver, with the power and authority to take charge and possession of the real estate and the rents, issues and profits thereof or belonging to the residuary devise as contained in the will of Enoch Pratt, deceased, and to collect the outstanding rents and income therefrom due to the said residuary devisee.

And it is further ordered, that before the said William Pinkney

Whyte proceed to act as receiver by virtue of this order, he shall give bond to the State of Maryland in the penalty of thirty thousand dollars, with a surety or sureties to be approved by this court, or the clerk thereof, and conditioned for the faithful performance of the trust reposed in him by this order, or which may be reposed in him by any future order or decree in the premises.

And it is further ordered, that a writ of injunction be issued as is prayed in said bill upon the filing of a bond by the plaintiff in the penalty of ten thousand dollars, with security to be approved by the clerk of this court; but liberty is hereby reserved to the defendants to move for the re-cinding of this order, and for a dissolution of the injunction to be issued as aforesaid, at any time after filing answers to said bill on giving the plaintiff five days' previous notice of such motion.

And the clerk is hereby directed to annex a copy of this order to the writ of injunction.

HENRY STOCKBRIDGE.

And thereupon to wit, on the same day receiver's approved bond was filed; and afterwards on the same day approved injunction bond was filed. Injunction issued accordingly and served on defendants.

Answer of Defendants.

(Filed 22d March, 1898.)

THE TRUSTEES OF THE SHEPPARD and Enoch Pratt Hospital
vs.
JAMES A. GARY and ARNOLD S. Hyde, Executors of the Last Will and Testament of Enoch Pratt.

No. 3680, A. In the Circuit Court No. 2 of Baltimore City.

To the honorable the judge of said court:

The answer of James A. Gary and Arnold S. Hyde, executors of the last will and testament of Enoch Pratt, to the bill of
105 complaint against them by the Trustees of the Sheppard and Enoch Pratt Hospital exhibited in this court.

1. These defendants admit the allegations contained in the first paragraph of the said bill to be true.

2. They admit the matters alleged in the second paragraph of the said bill.

3. They admit the matters alleged in the third paragraph of the said bill.

4. They admit the matters alleged in the fourth paragraph of the said bill.

5. They also admit that the residuary clause of their said testator's will is correctly set forth in the fifth paragraph of the said bill.

6. As to the matters alleged in the sixth and seventh paragraphs

of the said bill, these defendants have no knowledge, and while they believe the same to be true, yet they have been notified and warned by the persons named as alternative legatees and devisees in the said residuary clause of a claim on their part that the alleged act of the General Assembly of Maryland is null and void, and that they, the said alternative lagatees and devisees are now entitled to the said residuary estate; wherefore these defendants cannot admit the matters alleged in the said sixth and seventh paragraphs, but leave the plaintiffs to make such proof thereof as it may be advised.

7. They admit the allegations of the eighth paragraph to be true, with the following qualification: Since the filing of the inventory therein mentioned and since the institution of this suit, these defendants have discovered that the lot of ground No. 103 South Charles street, having a front of about twenty-four feet on Charles street, and depth of about seventy-five feet and appraised at $8,000, is not fee-simple property, as understood by these defendants and stated in said inventory, but is subject to a nominal rent of two cents per annum, as will appear from the deed of assignment thereof from Conrad Kellar, Junior, and others to the said Enoch Pratt, which is dated July 5th, 1856, and recorded among the land records of Baltimore city, in Liber E. D., No. 107, folio 300, &c.

8. These defendants admit the matters alleged in the ninth paragraph of the said bill.

9. As to the matters alleged in the tenth paragraph of the said bill, these defendants believe that the said paragraph correctly states the substantial meaning of the portion of the residuary clause of their testator's will therein referred to; but inasmuch as the said residuary clause is fully set forth in the fifth paragraph of the said bill, these defendants leave the proper construction thereof to be determined by this honorable court.

10. For the reasons hereinafter stated, these defendants do
106 not and cannot admit the matters alleged in the eleventh paragraph of the bill of complaint.

11. As to the matters alleged in the twelfth paragraph of the said bill, these defendants admit they did claim to continue in the possession, control and management of the said real estate until it shall have been decided whether or not the condition imposed by the testator has been fully performed by the plaintiff, and that some of the reasons assigned by these defendants in justification of their refusal to deliver possession of the said real estate are correctly stated in the said paragraph; but these defendants show unto your honor that shortly before the institution of this suit, the defendants filed in this honorable court a bill of complaint, in the nature of a bill of interpleader, against the plaintiff herein, and the persons named by their testator as his alternative residuary legatees and devisees, and also against their said testator's heirs-at-law and next of kin of him, wherein these defendants stated that the estate both real and personal in their hands was claimed both by the plaintiff herein and by the said alternative legatees and devisees, and that these defendants were unable to decide among the conflicting claimants, and prayed the court to take charge of the said property, to construe the said

will and to require the said conflicting claimants to interplead and adjust their rights among themselves; and these defendants do, by reference, make the said bill of complaint so filed by them, part of this answer, and pray that the same may be taken and considered as if incorporated and fully set forth herein.

12. For the reasons stated in the foregoing paragraph of this answer and more fully set forth in their bill of interpleader therein referred to, these defendants cannot admit the matters alleged in the thirteenth paragraph of said bill.

13. In answer to the fourteenth paragraph, these defendants say that up to the institution of this suit they had encountered no difficulty whatever in collecting rents on the said real estate, or in keeping the improvements insured for the benefit of their testator's estate, all of which they believe they were duly authorized to do by the aforesaid direction in the residuary clause of their said testator's will.

And having fully answered, these defendants pray that they may be hence dismissed with their costs.

JAMES A. GARY,
ARNOLD S. HYDE,
Executors Estate of Enoch Pratt.

BARTON AND WILMER,
Att'ys for Def'ts.

107 STATE OF MARYLAND, *Baltimore City,* } *To wit:*

I hereby certify that on this 22d day of March, 1898, before me, the subscriber, a justice of the peace of the State of Maryland, in and for the city of Baltimore, personally appeared in my said city, Arnold S. Hyde, one of the executors of the will of Enoch Pratt, and made oath on the Holy Evangely of Almighty God, that the matters and things stated in the foregoing answer are true, to the best of his knowledge and belief.

JOHN L. HEBB, *J. P.*

Petition of Ellen J. O. Phinney et al. for Appointment of Coreceiver and Order of Court.

(Filed 26th March, 1898.)

THE TRUSTEES OF THE SHEPPARD and Enoch Pratt Hospital
vs.
JAMES A. GARY and ARNOLD S. Hyde, Executors of the Last Will and Testament of Enoch Pratt, Deceased.
} In the Circuit Court No. 2 of Baltimore City.

To the Honorable George M. Sharp, judge of the circuit court No. 2 of Baltimore city:

1. The petition of Ellen J. O. Phinney, Gera-d C. Tobey, Horace P. Tobey, David G. Pratt, Edmund T. Pratt, Mailand L. Pratt,

Lowell Tyler Pratt, administrator of Isaac Lowell Pratt, deceased; Emily L. Pratt, widow of Isaac Lowell Pratt, deceased; Lowell Tyler Pratt, Emily Pratt, Stella Potter and James A. Potter, Jr., her husband, all residents of the State of Massachusetts, respectfully shows unto your honor:

That your petitioner, Ellen J. O. Phinney, is a niece of the late Enoch Pratt, and one of those named as alternate residuary devisees and legatees of the said Enoch Pratt, deceased, filed in this case, and your petitioners, Gerard C. Tobey, Horace P. Tobey, David G. Pratt, Edmund T. Pratt and Mailand L. Pratt, are nephews of the said Enoch Pratt, deceased, also named as alternate devisees and legatees in the said will; and that the other nephew named as alternate legatee and devisee in said will, Isaac Lowell Pratt, has departed this life since the death of said Enoch Pratt, and the said petitioner, Lowell Tyler Pratt, is his son and the administrator of his will, appointed by the probate court for the county of
108 Suffolk, Massachusetts. A certified copy of the letters of administration issued to said Lowell T. Pratt, is herewith filed, marked "Petitioners' Exhibit No. 1" and prayed to be taken as part of this petition; and your said petitioner, Emily L. Pratt, is the widow of the said Isaac Lowell Pratt, deceased; your petitioners, Lowell Tyler Pratt, Emily Pratt and Stella Potter are children of said Isaac Lowell Pratt; and your petitioner, James A. Potter, Jr., is the husband of the said Stella Potter; and that your said petitioners are entitled under the provisions of the said will to the legal possession and beneficial interest in the personal estate passing thereunder, and are of right seized of the real estate passing under said will for which a receiver has been appointed in this case.

2. Further, your petitioners show that the said James A. Gary and Arnold S. Hyde, executors of the last will and testament of said Enoch Pratt, have filed in this court a bill in the nature of a bill of interpleader in which your petitioners are made parties as claimants of said residuary estate under said will, and in which said executors state to this honorable court that they are unable to decide between the conflicting claimants, the plaintiffs herein and your petitioners. Said bill of interpleader, while not mentioned in plaintiff's bill, is by reference made part of defendants' answer in this case.

3. Your petitioner further shows, that they had no notice that application would be made for the appointment of a receiver, and were in no way consulted as to the choice of a person or persons to be appointed receiver or receivers of the said real estate of the said Enoch Pratt mentioned in the bill in this case.

And your petitioner further shows unto your honor, that they are informed that William Pinkney Whyte who has been appointed as sole receiver by your honor, was suggested as such by the plaintiff in this case, he being one of the counsel who filed the bill for the appointment of said receiver.

And your petitioners respectfully represent to your honor that they are not willing that the said real estate should be managed by the said William Pinkney Whyte as sole receiver, and that by rea-

son of their interest in said real estate, they are entitled to ask, and they do hereby ask that W. Irvine Cross, an attorney of this court, may be appointed as coreceiver with the said William Pinkney Whyte.

And, as in duty, &c.

ABNER McKINLEY,
E. J. D. CROSS,
Solicitors for Petitioners.

109 STATE OF MARYLAND, *City of Baltimore,* } *To wit:*

I hereby certify, that on this 26th day of March, 1898, before me the subscriber, a notary public of the State of Maryland, in and for the city of Baltimore, duly appointed, commissioned and qualified, personally appeared E. J. D. Cross and made oath in due form of law, that the plaintiffs in the above petition are all residents of the State of Massachusetts, and that he is attorney for said plaintiffs, and as such is fully cognizant of the matters and facts set forth in the above petition, and that said matter, and facts are true as therein stated. to the best of his knowledge, information and belief.

Witness my hand and notarial seal on this 26th day of March, 1898.

[Seal Notary Public.]

GEORGE W. HANLENBECK,
Notary Public.

The foregoing petition having been read and considered, it is thereupon ordered this 26th day of March, 1898, that the prayer of the said petition be granted *until* cause to the contrary be shown on or before the 2d day of April, 1898; provided that a copy of this petition and order be served upon the Hon. William Pinkney Whyte, receiver, or his solicitor, on or before the 28th day of March, 1898.

HENRY STOCKBRIDGE.

Order of Court.

(Filed 30th March, 1898.)

THE TRUSTEES OF THE SHEPPARD and Enoch Pratt Hospital
vs.
JAMES A. GARY and ARNOLD S. Hyde, Executors of the Last Will and Testament and Codicil of Enoch Pratt, Deceased.
} In the Circuit Court No. 2 of Baltimore City.

Petition of Ellen J. O. Phinney and others, app't of add'l receivers.

On the application of the receiver it is ordered by the court this 30th day of March, A. D. 1898, that the time fixed for the receivers to show cause why an additional receiver should not be appointed

per the order of this court passed on the 26th day of March, 1898, be and the same is hereby extended to April 8th, 1898, instead of April 28th, 1898, as heretofore ordered.

HENRY STOCKBRIDGE.

110 *Answer of Receiver to Petition of Ellen J. O. Pinney et al.*

(Filed 6th April, 1898.)

THE TRUSTEES OF THE SHEPPARD and Enoch Pratt Hospital
vs.
JAMES A. GARY and ARNOLD S. Hyde, Executors of the Last Will and Testament of Enoch Pratt, Deceased.
} In the Circuit Court No. 2 of Baltimore City.

To the Honorable George M. Sharp, judge of the circuit court No. 2 of Baltimore city:

William Pinkney Whyte, the receiver heretofore appointed by this honorable court in the above entitled cause, for answer to the rule to show cause passed on the 20th day of March, 1898, why the prayer of the petition of Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, David G. Pratt, Edmund G. Pratt, Marland L. Pratt, Lowell Tyler Pratt, adm'r, &c.; Emily Pratt, Lowell Tyler Pratt, Stella Potter and James A. Potter, Jr., should not be granted, most respectfully now shows cause as follows:

1. That although certain of the petitioners may be named in the will of the late Enoch Pratt as residuary legatees and devisees, upon the happening of certain contingencies, as may also be the case in regard to Isaac Lowell Pratt, deceased, whose son and administrator is one of the petitioners, yet no such contingencies have happened or can now happen; and not one of the said petitioners are parties to this proceeding, nor have they or any of them any apparent right or title in or to the real property in the charge of the said receiver. The bill of complaint and exhibits shows that the primary residuary, legatee and devisee has complied with the requirement of the will of the said Enoch Pratt, deceased, imposed upon the said residuary legatee and devisee, by o-taining from the General Assembly of Maryland at its first session after the death of the said testator, the amendment to the charter of the corporation so named by Enoch Pratt as the legatee and devisee of the residuum of his estate, authorizing the requis-te change of title, and by accepting such amendment to its charter, and by formal resolution adopting the name of "the Trustees of the Sheppard and Enoch Pratt Hospital;" so that the *prima facie* legal title is in the complainant in this cause and the complainant became seized of and could have assumed possession of all the real estate comprised in said residuum immediately after its compliance with
111 the condition aforesaid, for it is apparent that such real estate was not devised to nor vested in the executors of said last will and testament of Enoch Pratt, deceased, but that

they had only a naked authority to collect the rents and income from the real estate aforesaid; to keep the property insured and to invest the surplus income in Baltimore City stock, only, "until it shall have been decided as above provided, whether the said condition of my aforesaid devise and bequest of said residue will be performed—*that is to say, whether the said corporation will obtain authority as aforesaid to change its title, and will, in fact, adopt the title above designated;*" and your respondent asserts that the exhibits in this case so show the perfect compliance therewith; wherefore he suggests that the petitioner have no right to interfere in this case by asking for a joint receivership, nor indeed to intervene at *at* all; that should there be any right whatever in such petitioners, not apparent at this time, they would have a remedy at law against the complainant corporation. Moreover, the practice of courts of equity is, in fact, to appoint receivers only at the instance of a party, who has an acknowledged interest or a strong presumption of title in himself. It is also urged in this case that so far from these petitioners having an acknowledged right or interest in the real estate in question, the very gentleman suggested as a coreceiver, has, since the filing of the petition in this case, presented a bill of complaint to this court as solicitor for the brother and sister of the late Enoch Pratt, who claim to be his only heirs at law and next of kin, based upon the theory that the petitioners in this case, who are asking for his appointment as coreceiver, have no right or property to the title at all, for the heirs-at-law and next of kin maintain that the whole clause in the will of Enoch Pratt, deceased, disposing of the residue of his estate, is null and void. So, that the petitioners can scarcely be recognize- as having an acknowledged interest in the property so far as the papers in this court disclose. To permit persons claiming under such circumstances to intervene by petition in a controversy, previously commenced, might protract litigation indefinitely and subject the original parties to irreparable loss.

2. That this is not a creditor's bill where all parties who claim an interest are called into court to authenticate their claims or to maintain various rights; but a simple application by a residuary legatee and devisee holding *prima facie* legal title to the property, to have the rents and profits of the real estate collected; its care and protection from fire secured, until it can be determined whether the executors of Enoch Pratt's will, were not bound in law and equity, to surrender the same to the complainant as such residuary legatee and devisee when it had complied fully with every condition and requirement imposed upon it by the terms of said will, and to leave any other claimants not designated as entitled, to their remedies against the party into whose hands the *prima facie* title had taken the estate.

3. That in the absence of some extraordinary circumstances, it is not usual or customary to appoint more than one receiver in the case like the present one.

112 4. That the income from the real estate is not large, is not very difficult to be collected, the property simply requiring

ordinary attention, and the income such as not to justify the appointment of more than one receiver.

See estimated income herewith filed, marked " W. P. W. No. 1."

5. That so far as the reference in the petition to the bill filed by the executors of Enoch Pratt's will is concerned, this respondent alleges that a demurrer thereto is now pending, and that proceeding has no bearing whatever upon the determination of this question.

6. That the petitioners were no parties to this proceeding, and that no notice was necessary to be given to them of the application for a receiver, nor was their wish as to the choice in any way desirable or needful.

Respectfully submitted.

WM. PINKNEY WHYTE, *Receiver.*

STATE OF MARYLAND, *City of Baltimore,* } *sct:*

On this sixth day of April, A. D. 1898, before the subscriber, a justice of the peace of the State of Maryland, in and for the city of Baltimore aforesaid, personally appeared William Pinkney Whyte, the receiver named therein, and made oath in due form of law, that the matters and things stated in the foregoing answer are true to the best of his knowledge, information and belief.

Sworn before—

GEO. W. McCAFFREY, *J. P.*

RECEIVER'S EXHIBIT W. P. W. No. 1.

(Filed with aforegoing answer.)

Estimated Annual Income from the Real Estate of Enoch Pratt, Deceased.

Ground rents:

East Chase St.		$64 00	
East Chase St.		168 00	
Stricker St.		64 00	
Scott St.		66 00	
Hughes St.		400 00	
S. Charles St.		83 00	
			$845 00
113	8 Scott St., house (weekly)	$832 00	
	No. 23 S. Charles St.	450 00	
No. 25 S. Charles St.		500 00	
Wine alley		400 00	
101 S. Charles St.		1,000 00	
116 Commerce St.		400 00	
Buchanan's wharf		800 00	
1602 Park avenue		500 00	
2 houses, Tyson St		240 00	
			5,122 00

Gross income from Locust Point wharf property for coming year $11,500, one-half of which belongs to Callow estate, leaving for Pratt estate about	5,750 00
In charge of E. Pratt & Bro.	
Approximate proportion of rent of property cor. Charles and Balto. Sts., in charge of executors	660 00
Total	$12,377 00

Petition of Isaac Pratt, Jr.

(Filed 28th April, 1898.)

THE TRUSTEES OF THE SHEPPARD AND Enoch Pratt Hospital, Plaintiff,
vs.
JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, Deceased.
In the Circuit Court No. 2 of Baltimore City.

To the Honorable George M. Sharp, judge of circuit court No. 2 of Baltimore city:

The petition of Isaac Pratt, Jr., of the city of Boston, in the State of Massachusetts, and of Susannah K. Tobey, of the town of Wareham, State of Massachusetts, respectfully show unto your honor:

1. That your petitioner, Isaac Pratt, Jr., is a brother, and the said Susannah K. Tobey, a sister of the late Enoch Pratt, of Baltimore city, and that they constitute the sole heirs and next of kin of the said Enoch Pratt, deceased.

2. That your petitioners further show that your said petitioners, as the sole heirs and next of kin of the said Enoch Pratt,
114 are entitled to the legal possession and beneficial interest in the personal estate described in the residuary clause of the will of said Enoch Pratt, and are of right seized of the real estate embraced in said residuary clause for which a receiver has been appointed in this case.

3. They further show unto your honor that the said residuary estate of said Enoch Pratt is claimed by the plaintiff in this suit, the "Trustees of the Sheppard and Enoch Pratt Hospital," which has filed a bill to enforce this bill to said estate.

4. They also show unto your honor that your said petitioners have themselves filed a bill in this court to enforce their claim to said estate, claiming that the said Enoch Pratt died intestate as to the real and personal property embraced in said residuary clause of the said will; the gift to the said Sheppard and Enoch Pratt Hospital being, as your petitioners claim invalid, because of its indefinite character.

A copy of the said bill is herewith filed, marked "Petitioners' Exhibit Next of Kin No. 1," and prayed to be taken as a part of this petition.

6. Your petitioners further show unto your honor that the whole of said real and personal property aforementioned, is also claimed by Ellen J. O. Phinney, and others, who are a niece and certain nephews of the said Enoch Pratt, deceased, on the ground that the act changing the name of the "Trustees of the Sheppard Asylum" to "the Trustees of the Sheppard and Enoch Pratt Hospital" is invalid and void, and that the whole of said residuary estate has therefore vested in said niece and nephews under the provisions of said will, which will is filed as an exhibit with the plaintiffs' bill in this case, and that for this reason your petitioners have made the said Ellen J. O. Phinney and others, parties defendant in their said bill.

7. Your petitioner- further show that the receiver appointed in this case, William Pinkney Whyte, Esq., was appointed such on the nomination of one party alone in interest, to wit, the said Trustees of the Sheppard and Enoch Pratt Hospital, and that he is not an indifferent person between the parties whose interests are involved in said litigation, but is and has been counsel for the said Sheppard and Enoch Pratt Hospital and has filed a bill in this court to enforce the claim of said Trustees of the Sheppard and Enoch Pratt Hospital, to the possession of said property; that his appointment was asked and made without conference with or knowledge of any of the other parties in the case; and that the said Ellen J. O. Phinney and others, have filed a petition in this cause asking that William Irvine Cross be appointed coreceiver along with the said William Pinkney Whyte, and your petitioners, the said Isaac Pratt, Jr., and Susanna K. Tobey, also hereby pray your honor to appoint the said William Irvine Cross coreceiver along with the said William Pinkney Whyte, so that the said property may not, while a contest as to its ownership is pending, be
115 left in the control of the attorney for one party to said contest, but that the other parties to said contest may be represented in the selection of the receivers.

And, as in duty bound, &c.

ISAAC PRATT, JR.

W. IRVINE CROSS,
Solicitor for Petitioners Isaac Pratt, Jr., and Susanna K. Tobey.

STATE OF MASSACHUSETTS, *Suffolk County,* } *To wit:*

Personally appeared on this twenty-first day of April, 1898, before the subscriber, a notary public of the State of Massachusetts, in and for the county of Suffolk aforesaid, duly appointed, commissioned and qualified, Isaac Pratt, Jr., and made oath in due form of law that the matters and facts set forth in the above petition are true as therein set forth, to the best of his knowledge, information and belief.

Sworn to before the subscriber this twenty-first day of April, 1898.

[L. S.] HORACE A. JORDAN,
Notary Public.

Answer of the Trustees of the Sheppard and Enoch Pratt Hospital to the Petition of Isaac Pratt, Junior, and Susanna K. Tobey.

(Filed 11th May, 1898.)

THE TRUSTEES OF THE SHEPPARD AND Enoch Pratt Hospital *vs.* JAMES A. GARY and ARNOLD H. HYDE, Executors of the Last Will and Testament of Enoch Pratt, Deceased.	In the Circuit Court No. 2 of Baltimore City.

To the Honorable George M. Sharp, judge of the circuit court No. 2 of Baltimore city:

The answer of the Trustees of the Sheppard and Enoch Pratt Hospital to the petition of Isaac Pratt, Jr., of Boston, and Susanna K. Tobey, of Wareham, in Massachusetts, filed in the above-entitled cause, respectfully shows unto your honor:

116 1. That while it may be true that Isaac Pratt, Junior, may be a brother and Susanna K. Tobey, a sister of the said Enoch Pratt, deceased, this respondent has no knowledge, whether or not they are the sole heirs-at-law and next of kin of the said deceased, and should it be requisite to establish such relation, it insists on due proof thereof.

2. This respondent denies, that as the sole heirs-at-law and next of kin of the said Enoch Pratt, or in any other relation, the petitioners are entitled to the legal possession and beneficial interest in the personal estate described in the residuary clause of the will of said Enoch Pratt, and they deny that the petitioners are of right seized of the real estate embraced in said residuary clause, for which a receiver has been appointed in this case; but on the contrary, this respondent avers that the said petitioners are absolutely without any legal or equitable right, or title to the real and personal estate devised and bequeathed to this respondent in the residuary clause of Enoch Pratt's will; that they are not parties to this proceeding, nor have they any apparent right or title in and to the real property in the charge of the receiver already appointed herein.

The bill of complaint and exhibits show, that the primary residue legatee and devisee has complied with the requirement of the will of the said Enoch Pratt, deceased, imposed upon the said residuary legatee and devisee, by obtaining from the General Assembly of Maryland, at its first session held after the death of the said testator, the amendment to the charter of the corporation so named by Enoch Pratt, as the legatee and devisee of the residuum of his estate, authorizing the requisite change of title and by accepting such amendment to its charter and by formal resolution, adopting the name of "The Trustees of the Sheppard and Enoch Pratt Hospital," so, that the *prima facie* legal title is in the complainant in this cause; and the complainant became seized of and could have assumed possession of all the real estate comprised in said residu-m,

immediately after its compliance with the condition aforesaid, for it is apparent that such real estate was not devised to nor vested in the executors of said last will of Enoch Pratt, deceased, but that they had only a naked authority to collect the rents and income from the real estate aforesaid, to keep the property insured and to invest the surplus income in Baltimore City stock only, "until it shall have been decided as above provided, whether the said condition of my aforesaid devise and bequest of said residue will be performed—*that is to say, whether the said corporation will obtain authority as aforesaid, to change its title and will in fact adopt the title above designated*"—and your respondent asserts that the exhibits in this case so show the perfect compliance therewith; wherefore he suggests that the petitioners have no right to interfere in this case by asking for a joint receivership, nor indeed to intervene at all; that should there be any right whatever in such petitioners not apparent at this time, the- would have a remedy at law against
117 the complainant corporation. Moreover, the practice of courts of equity is in fact to appoint receivers, only at the instance of a party who has an acknowledged interest, or a strong presumption of title in himself. To permit persons claiming under such circumstances to intervene by petition in the controversy previously commenced might protract litigation indefinitely, and subject the original parties to irreparable loss.

3. This respondent admits, that it does claim all the residuary estate mentioned in the will of said Enoch Pratt, and has filed a bill in this court to compel the executors of the said will to perform their duty by delivering and transferring the same to the distinctly described devisee and legatee referred to in the clause disposing of the residue of said Enoch Pratt's estate.

4. That whatever claim the said petitioners may have on some indefinite grounds to the residue of Enoch Pratt's estate in some other case has no bearing in this case, as they have no apparent or acknowledged right and title to the property in charge of the receiver appointed in this cause.

5. That the allegations of the sixth paragraph of the petition have no bearing on the question made in the petition filed herein.

6. That it is true that the receiver already appointed in this case has acted as counsel for this respondent, but that such fact does not *mitigate* against his acting with absolute fairness to all parties concerned.

7. That this is not a creditors' bill where all parties who claim an interest are called into court to authenticate their claims or to maintain various rights, but a simple application by a residuary legatee and devisee, holding the *prima facie* legal title to the property, to have the rents and profits of the real estate collected, its care and protection from fire secured until it can be determined whether the executors of Enoch Pratt's will were not bound in law and equity to surrender the same to the complainant, as such residuary legatee and devisee, when it had complied fully with ever- condition and requirement imposed upon it by the terms of the said will, and to leave any other claimants not designated as entitled to their

remedies against the party into whose hands the *prima facie* title had taken the estate.

8. That in the absence of some extraordinary circumstances, it is not usual or customary to appoint more than one receiver in a case like the present one.

9. That the income from the real estate is not large, is not very difficult to collect, the property simply requiring ordinary attention, and the income such as not to justify the appointment of more than one receiver.

See estimated income heretofore filed, marked "W. P. W., No. 1."

10. That the petitioners are not parties to this proceeding, and that no notice was necessary to be given to them of the application, nor was their wish as to the choice of proper person for receiver in any way desirable or needful.

118 Wherefore this respondent objects to the appointment of a coreceiver for parties who have no *prima facie* title to the real estate in question.

And, as in duty bound, &c.

THE TRUSTEES OF THE SHEPPARD
AND ENOCH PRATT HOSPITAL,

[Corporate Seal.]

By GEO. A. POPE, *President.*

Witness:
JOSEPH GRAPE.

WM. PINKNEY WHYTE,
WILLIS & HOMER, *Sol'rs for Respondent.*

STATE OF MARYLAND, *Baltimore City,* } *sct:*

On this 9th day of May, 1898, before the subscriber, a justice of the peace of the State of Maryland, in and for the city of Baltimore aforesaid, personally appeared George A. Pope, president of the plaintiff corporation, and affirmed that the facts herein stated are true, to the best of his knowledge and belief.

JOHN L. HEBB, *J. P.*

Bill of Complaint.

(Filed 31st March, 1898.)

Isaac Pratt, Jr., and Susanna K. Tobey *vs.* James A. Gary and Arnold S. Hyde, Executors of the Last Will and Testament of Enoch Pratt, Deceased, and Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, David G. Pratt, Edmund T. Pratt, Marland L. Pratt, Lowell Tyler Pratt, Emily Pratt, Stella Potter, and James A. Potter, Jr., Her Husband; Emily L. Pratt, Lowell Tyler Pratt, Administrators of I. Lowell Pratt, Deceased, Non-residents, and "The Trustees of the Sheppard and Enoch Pratt Hospital," a Corporation.	In the Circuit Court No. 2 of Baltimore City.

119 *Bill.*

To the Honorable George M. Sharp, judge of the circuit court No. 2 of Baltimore city:

The bill of compiaint of Isaac Pratt, Jr., a resident of the city of Boston, in the county of Suffolk, in the State of Massachusetts, and of Susanna K. Tobey, of Wareham, of the county of Plymouth, in the same State, respectfully shows unto your honor:

That one Enoch Pratt, a resident of the city of Baltimore, died in said city on the 17th day of September, 1896, leaving a last will and testament with a codicil thereto, duly executed, which will and codicil were duly admitted to probate by the orphans' court of Baltimore city, and are now of record in the office of the register of wills of said city in "Wills," Liber L. W. M., No. 76, folio 537, &c.; and on the 26th day of September, 1896, letters testamentary were duly granted by the orphans' court of Baltimore city aforesaid, to James A. Gary and Arnold S. Hyde, defendants named herein, Maria Louisa Pratt, widow of said Enoch Pratt, who was also named as an executrix, having declined to act. A certified copy of said will and codicil is herewith filed as "Plaintiffs' Exhibit A," and a copy of said letters testamentary as "Plaintiffs' Exhibit B," both of which it is prayed may be taken as part of this bill.

2. And they further show unto your honor, that your orator, Isaac Pratt, Jr., is the only brother, and your oratrix, Susanna K. Tobey, the only sister of said Enoch Pratt, and that they are therefore his only heirs and next of kin.

3. That the "Trustees of the Sheppard Asylum," named in the will of said Enoch Pratt, is a corporation of the State of Maryland, incorporated by act of assembly, chapter 274, of the Acts of 1853; a copy of which is herewith filed as "Plaintiffs' Exhibit C," and prayed to be taken as part of this bill.

4. And your orators further show to your honor that the said act incorporating said trustees was obtained from the legislature of Maryland by one Moses Sheppard, a wealthy citizen of Baltimore city, with the intention of endowing the institution so incorporated, and that by his last will and testament he left the large part of his estate to said corporation without restriction or condition of any kind. A certified copy of said last will and testament is filed herewith as "Plaintiffs' Exhibit D," and prayed to be taken as part of this bill.

5. And your orators further show unto your honor, that the said Moses Sheppard left careful written instructions to his trustees to show that he expressly desired that the institution for which he had procured the charter and to which he left his fortune should not be a charity hospital or an establishment for the indigent, but an institution distinctly different in character. In a letter to the trustees of said corporation, under date of January 16th, 1855,
120 which letter is in the hands of said trustees and cannot therefore be filed by your orators, the said Moses Sheppard uses the following expressions:

"My leading purpose is to found an institution to carry forward and improve the ameliorated system of treatment of the insane, irrespective of expense."

And again:

"My desire is for a small and expensive institution. I mean that each patient shall have an attendant when it may appear useful—an experimental establishment."

And again:

"It is my desire that this institution should be kept separate and distinct from any one of a similar character now being or hereafter to be erected by the State, or in any other way."

Clearly showing that in establishing an institution for the treatment of the insane, he not only did not desire to establish an eleemosynary institution, but that he relied on its limited funds to keep it from becoming such, and desired to prevent said trustees from procuring elsewhere the funds that would be necessary to the maintenance of a charitable institution for the indigent alone.

6. And your orators would further show unto your honor that while these were the desires of said Moses Sheppard, they were not put into his will for fear, as your orators believe, that, being difficult to express with the certainty which our law requires in such cases, they might render his bequest void, and his estate was left to said corporation without any condition whatever.

7. And your orators further show unto your honor that by "section 2," of the act incorporating said corporation, the "Trustees of the Sheppard Asylum," the object and design of the said corporation is declared to be simply "the founding and maintaining an asylum for the insane," and the furnishing of treatment free, or conducting an institution for the poor was utterly foreign to said purpose as therein expressed. And further, your orators show that the trustees of said corporation, in the operation and management of said asylum, as now and hitherto conducted, have never made

the slightest pretence that it was chartered to conduct an asylum for furnishing free treatment or treatment at low price, or for the exclusive or even special treatment of the insane poor. The free treatment has been a very small feature, if a feature at all; few, if any, patients having been treated gratuitously. Patients have paid according to the accommodation and treatment they could afford to pay for. It has been in no sense a low-priced institution. Indeed, one large field of its usefulness has been as a place of quiet sojourn for young men having temporary mental troubles as the result of wealth and its concomitants.

8. And your orators further show unto your honor, that by the twelfth clause of the will of said Enoch Pratt, deceased, filed herewith, by which the residue of his estate is left to said corporation, the "Trustees of the Sheppard Asylum," the said Enoch Pratt, while disclaiming any wish to alter the present management and working of the institution, carefully refrains from leaving said donation to said corporation for its general purposes, but speaks of said donation itself, having an object of its own said donation, and leaves upon a special trust for what he calls the "indigent insane," the words used by said testator being as follows: "While I do not wish to alter the operations and managements or the workings of the said asylum, as now existing and being carried on, it is my wish and will that — the income from my said residuary estate shall be used to complete the present buildings and grounds, and for the erection of such other buildings or building as will accommodate not less than two hundred additional inmates, and after that, the income from my aforegoing donation shall be devoted mainly to the care of the *indigent* insane in the most advisable manner, at very low charges, or absolutely free, as the trustees of said corporation, in the exercise of their judgment as to the rate to be charged, may deem best and wisest to promote the object of this donation."

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9. And your orators are instructed and believe, and so aver, that the said devise and legacy to the said corporation, the "Trustees of the Sheppard Asylum," is utterly invalid and void for the reason that it attempts to create in said corporation a trust that cannot be enforced; that it attempts to create a perpetuity, and that it attempts to create a trust in favor of a class of beneficiaries, the indigent insane, too indefinite to ask the enforcement of said trust in their favor, and the said residuary estate therefore remains undisposed of by the will of said Enoch Pratt, and the right and title thereto have vested in your orators as the heirs and next of kin of said Enoch Pratt.

10. And your orators further show that the said "Trustees of the Sheppard Asylum" have agreed to the "condition and bargain" set forth in the will of said Enoch Pratt, and have procured the passage by the legislature of Maryland, and approval by the governor, of an act changing the name of said corporation to "the Trustees of the Sheppard and Enoch Pratt Hospital," said act being chapter 17, of the Acts of 1898; a certified copy of which is filed herewith,

marked "Plaintiffs' Exhibit E," and prayed to be taken as part of this bill.

11. And your orators further show unto your honor, that under the will of said Enoch Pratt, the said residue of his estate was left to his niece, Ellen J. O. Phinney, and his six nephews, Gerard C. Tobey, Horace P. Tobey, I. Lowell Pratt, David G. Pratt, Edmond T. Pratt and Marlan L. Pratt, to be equally divided among them, and the issue *per stirpes* of any one of them that might be dead at the time of the decease of said Enoch Pratt; and one of said nephews, I. Lowell Pratt, has died since the decease of said Enoch Pratt, and the said defendant, Emily L. Pratt, is his widow, the defendants, Lowell Tyler Pratt, Emily Pratt and Stella Potter, are his children and heirs, the defendant, James A. Potter, Jr., being the hus-
122 band of said Stella Potter, and the said Lowell Tyler Pratt being the administrator of the estate of said I. Lowell Pratt, appointed by the probate court for Suffolk county, Massachusetts, all of which defendants are of full age, and are non-residents of this State, residing in the State of Massachusetts. A copy of the letters of administration so granted is filed herewith as "Plaintiffs' Exhibit F," and prayed to be taken as part of this bill.

12. And your orators further show unto your honor, that the said executors have completed the administration upon said estate and are ready to make distribution of the same, and have, as provided by the act of assembly of Maryland, chapter 255 of the Acts of 1896, asked the orphans' court of Baltimore city to name and appoint a day for the payment and distribution of said estate among the persons entitled to the same, and the court appointed the 25th day of March, 1897, for that purpose, whereof notice was duly given, but upon said day none of claimants of said residuary estate appeared.

13. And further, your orators show that said "the Trustees of the Sheppard and Enoch Pratt Hospital" have filed a bill in equity in this court against said —— ——, executors, asking that said executors may be compelled to account unto said "The Trustees of the Sheppard and Enoch Pratt Hospital," for all the residue of the estate of said Enoch Pratt, deceased, and to pay, set over, transfer and convey by proper deeds, assignments and transfer unto *to* said "The Trustees of the Sheppard and Enoch Pratt Hospital," all of the rest and residue of the estate of said Enoch Pratt. A copy of said bill is herewith filed as "Plaintiffs' Exhibit G," and prayed to be taken as a part of this bill.

14. And further, your orators show that the said defendants, Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, David E. Pratt, Edmund T. Pratt, Marland L. Pratt, Lowell Tyler Pratt, Emily Pratt, Stella Potter and James A. Potter, Jr., her husband, and Lowell Tyler Pratt, administrator as aforesaid, have notified the said executors that they claim the whole of said residue of the estate of said Enoch Pratt on the ground that the said act of 1898, chapter 17, changing the name of the "Trustees of the Sheppard Asylum" is unconstitutional and void, and that they are therefore

entitled to said residue under the provisions of said Enoch Pratt's will.

15. And your orators aver that under the laws of the State of Maryland the whole of said residue of said estate of Enoch Pratt, deceased, belongs unto your orator and oratrix as the sole heirs and next of kin of said Enoch Pratt, deceased.

To the end, therefore—

1. That the said James A. Gary and Arnold S. Hyde, executors as aforesaid of the will of Enoch Pratt, deceased, may account unto said plaintiffs, under the decree of this court, for all the residue of the said estate of Enoch Pratt, deceased, described in the
123 twelfth clause of his said will, which has come into their hands, or may hereafter so come, and may pay, set over, transfer and convey by proper deeds, assignments and transfers to said plaintiffs, all of the residue of the estate of said Enoch Pratt.

2. That your orators may have such further relief as their case may require:

May it please your honor to grant unto your orators the writ of subpœna directed to James A. Gary and Arnold S. Hyde, executors of the last will and testament of Enoch Pratt, deceased, and to "the Trustees of the Sheppard and Enoch Pratt Hospital," a corporation, and an order of publication against Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, David G. Pratt, Edmund T. Pratt, Marland L. Pratt, Lowell Tyler Pratt, Emily Pratt, Stella Potter and James A. Potter, Jr., her husband, Emily L. Pratt and Lowell Tyler Pratt, administrator of I. Lowell Pratt, deceased, all residents of the State of Massachusetts, commanding them to be and appear in this court on some certain day to be named therein, and abide by and perform such decree as may be passed therein.

And, as in duty, etc.

WM. IRVINE CROSS,
Solicitor for Plaintiffs.

STATE OF MASSACHUSETTS, *County of Suffolk,* } *To wit:*

I hereby certify that on this twenty-eighth day of March, 1898, before the subscriber, a notary public of the State of Massachusetts in and for the county of Suffolk aforesaid, duly appointed, commissioned and qualified, personally appeared Isaac Pratt, Junior, one of the plaintiffs in the above-entitled suit, and made oath in due form of law that the matters and facts set forth in the above bill are true as therein set forth, to the best of his knowledge, information and belief.

A. E. DENISON,
[SEAL.] *Notary Public.*

COMMONWEALTH OF MASSACHUSETTS,
OFFICE OF THE SECRETARY,
BOSTON, *March* 28, 1898.

I hereby certify that at the date of the attestation hereto annexed, Arthur E. Denison was a notary public for the said Common-

124 wealth, duly commissioned and constituted; that to his acts and attestation, as such, full faith and credit were and ought to be given in and out of court; that as such notary public he is by law authorized to administer oaths and take acknowledgments; and I believe his signature to the annexed attestation to be genuine.

[L. S.] In testimony of which, I have hereunto affixed the seal of the Commonwealth the date above written.

WM. M. OLIN,
Secretary of the Commonwealth.

NOTE.—Plaintiffs' Exhibit "A" referred to in the bill of complaint, and filed therewith, is a copy of the last will and testament of Enoch Pratt, deceased, as filed in the first case.

Plaintiffs' Exhibit "B" referred to in the bill of complaint, and filed therewith, is a copy of letters testamentary, as filed in the first case, marked "Exhibit C."

Plaintiffs' Exhibit "C" referred to in the bill of complaint, and filed therewith, is a copy of the charter of 1853, ch. 247, &c., as filed in the first case, marked "Exhibit A."

PLAINTIFFS' EXHIBIT D.

(Filed with bill of complaint.)

Moses Sheppard's Last Will and Testament.

I, Moses Sheppard of the city of Baltimore, in the State of Maryland, do make and declare this instrument of writing to be my last will and testament, and I do hereby revoke all and every other will and testament, which I may have heretofore made.

I authorize my executors to make such improvements on my lots in Greenmount cemetery as they may deem proper, all the expenses of which are to be paid out of my estate, where I direct my remains to be deposited.

After the payment of all debts which may be justly due by me at the time of my death, and which I expect will be few in number, and small in amount, I give, devise and bequeath all the estate and property of every kind and description whether real, personal or mixed, or wherever situate or being, which I may own, or be in any manner entitled to, at the time of my decease, and that whether the same be acquired by me at this time, or acquired by me at any time hereafter, as follows, that is to say:

First. I give and bequeath to my niece, Catherine Sheppard, of Philadelphia, five hundred dollars.

125 Second. I give and bequeath to Sarah Shotwell, wife of Edmund Shotwell, of Philadelphia, five hundred dollars.

Third. I give and bequeath to Nathan Sheppard, son of my deceased nephew, Nathan Sheppard, five hundred dollars.

Fourth. I give and bequeath to my friend, Isaac Tyson, son of Elisha Tyson, deceased, one thousand dollars; and in addition thereto I also hereby release and exonerate the said Isaac Tyson

from all and every debt or claim which he may owe, or appear to owe me at the time of my decease.

Fifth. I give and bequeath to George Barton, a colored man now residing with me, the sum of one hundred dollars.

Sixth. I give and bequeath to "the Trustees of the Sheppard Asylum," a body politic and corporate, incorporated by the General Assembly of Maryland, by said name, style and title of "the Trustees of the Sheppard Asylum," and to its successors forever, all my library, books, papers, pictures, maps, &c., and bookcases, and also all my household furniture of every kind—the whole of the same to be kept in and for the use of the said asylum, except only such part of the said household furniture as the said corporation may deem it proper to sell and dispose of.

Seventh. I give, devise and bequeath to the said corporation, "the Trustees of the Sheppard Asylum," all the rest, residue and remainder of my estate, of every kind and description whatever, whether real, personal or mixed and wheresoever situate or being, which I may own, or have any right or title to, at the time of my decease, and whether the same be acquired by me at this time, or acquired by me at any time hereafter to it, the said corporation and its successors forever. It being my meaning and intention to make said corporation the residuary legatee and devisee of this my last will and testament.

Eighth. I hereby constitute and appoint David M. Perine and Richard H. Townsend, executors of this my will.

In testimony whereof I hereunto subscribe my name and affix my seal on this sixteenth day of January, in the year of our Lord one thousand eight hundred and fifty-five.

MOSES SHEPPARD. [SEAL.]

Signed, sealed, published, pronounced and declared by Moses Sheppard, the testator above named, as and for his last will and testament, in our presence, who, at his request, in his presence and in the presence of each other have hereunto subscribed our names as witnesses to the same.

ROBERT FULTON.
T. HANSON BELT. (In duplicate.)
WINDHAM SPURRIER.

126 BALTIMORE CITY, *88:*

On the 7th day of February, 1857, came Robert Fulton, T. Hanson Belt and Windham Spurrier, the three subscribing witnesses to the aforegoing last will and testament of Moses Sheppard, late of said city, deceased, and made oath on the Holy Evangely of Almighty God, that they did see the testator sign and seal this will; that they heard him publish, pronounce and declare the same to be his last will and testament; that at the time of his so doing he was to the best of their apprehensions of sound and disposing mind, memory and understanding, and that they subscribed their names as wit-

nesses to this will in his presence, at his request and in the presence of each other.

Sworn to in open court.

Test:

N. HICKMAN,
Register of Wills for Baltimore City.

STATE OF MARYLAND, *Baltimore City,* } *ss:*

I, Stephen R. Mason, register of wills and by law, keeper of the seal and of the records, and of the original papers of the orphans' court for Baltimore city, do hereby certify that the aforegoing is a true and full copy of the last will and testament of Moses Sheppard, late of said city, deceased, with proof thereof, taken from "Wills," Liber, N. H., No. 27, folio 266, &c., being one of the records kept in the office of register of wills for Baltimore city.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court and office, this 27th day of December, in the year of our Lord, eighteen hundred and ninety-seven. [SEAL.]

STEPHEN R. MASON,
Register of Wills for Baltimore City.

NOTE.—Exhibit E, referred to in the bill of complaint and filed therewith, is a copy of amendment of 1898, ch. 17, filed in first case, marked "Exhibit E."

NOTE.—Plaintiffs' Exhibit "G," referred to in the bill of complaint and filed therewith, is a copy of the bill of complaint filed in the first case, 7th March, 1898.

127 *Answer of James A. Gary and Arnold S. Hyde, Executors, &c., Defendants, to Bill of Complaint.*

(Filed (*f'd*) 20th April, 1898.)

ISAAC PRATT, JR., and SUSANNA K. TOBEY *vs.* JAMES A. GARY and ARNOLD S. HYDE, Executors, etc., and Others. } In the Circuit Court No. 2 of Baltimore City.

To the honorable the judge of the circuit court No. 2 of Baltimore city:

The answer of James A. Gary and Arnold S. Hyde, executors of the will of Enoch Pratt, to the bill of complaint against these defendants and others exhibited in this court by Isaac Pratt, Jr., and Susanna K. Tobey.

1. These defendants admit the allegations of the first, second, third and fourth paragraphs of the said bill to be true.

2. They have no knowledge of the matters alleged in the fifth, sixth, seventh, eighth and ninth paragraphs of the said bill, and

can therefore neither admit nor deny the same, but leave the plaintiffs to make such proof thereof as they may be advised.

3. They admit the allegations of the tenth paragraph of the said bill to be true.

4. They also admit the allegations of the eleventh paragraph to be true, except the allegation that since the death of the said Enoch Pratt, one of his nephews, I. Lowell Pratt, has died, leaving a widow, Emily L. Pratt, and three children, Lowell Tyler Pratt, Emily Pratt and Stella Potter, the wife of James A. Potter, Jr., and that the said Lowell Tyler Pratt has been appointed administrator of the estate of the said I. Lowell Pratt by the probate court for Suffolk county, Massachusetts.

These defendants have no knowledge of the death of the said I. Lowell Pratt, either testate or intestate, or as to who are his heirs and next of kin, and can therefore neither admit nor deny this portion of the said paragraph, but leave the plaintiffs to make such proof thereof as the- may be advised.

5. They admit the allegations of the twelfth and thirteenth paragraphs of the bill to be true.

6. They cannot admit that they have been notified of a claim on the part of the persons named in the fourteenth paragraph,
128 but they do admit and show unto your honor that before the institution of this suit a formal notice was served upon them, of which the following is a copy:

"To James A. Gary and Arnold S. Hyde, executors of the last will and testament of Enoch Pratt, deceased.

"GENTLEMEN: As counsel and attorneys for the residuary devisees of the late Enoch Pratt, we hereby notify you that the said devisees claim the residuary estate of the said Enoch Pratt as left by his last will, and notify you not to hand over said residuary estate, or any part of it, to any other than the said devisees, and more especially not to hand over the same, or any part of it, to 'the Trustees of the Sheppard Asylum,' or 'the Trustees of the Sheppard and Enoch Pratt Hospital.'

"And we further notify you that should you transfer any part of said estate to such trustees, that you will be held personally liable for such action.

"ABNER McKINLEY,
"W. IRVINE CROSS,
"*Attorneys for Devisees.*"

7. These defendants neither admit nor deny the allegations of the fifteenth paragraph of the said bill, but leave the plaintiffs to make such proof thereof as the- may be advised.

8. Further answering, the defendants show unto your honor that before the institution of this suit and after the institution of the suit brought by the Trustees of the Sheppard and Enoch Pratt Hospital, which is referred to in the said bill of complaint, these defendants filed in this honorable court a bill in the nature of a bill of interpleader, wherein they recited their proceedings in the

orphans' court of Baltimore city, and the fact that the residuary estate remaining in their hands was claimed both by the Trustees of the Sheppard and Enoch Pratt Hospital, and by the persons named by their testator as alternative residuary devisees and legatees; that these defendants were unable to decide between the conflicting claimants, and that one suit had been brought against them by the said corporation, and another suit was threatened by the said alternative devisees and legatees on account of the same property; and in their said bill these defendants prayed this court to take jurisdiction of the said property, to require the said conflicting claimants to interplead and adjust their rights and enjoin them from instituting or prosecuting any suit or action for or on account of the said property against these defendants.

9. These defendants further show unto your honor that on their said bill, an order of publication was passed requiring the plaintiff herein and the defendants, Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, David E. Pratt, Edmund T. Pratt, Morland L. Pratt, and also the said I. Lowell Pratt, to appear in this court on or before the sixth day of May, 1898, and show cause, if any they have, why the relief prayed should not be granted; and that the said order has been and is now being regularly published in
129 accordance with its terms, although as yet none of said non-residents have appeared in answer thereto; and these defendants by reference make the proceedings in the same cause so instituted by themselves (see Docket A, 1898, folio 76—No. 3676 A), part of this answer, and pray that the same may be taken and considered as part hereof as if incorporated and fully set forth herein; and they also pray that the cause so instituted by them, and this cause be consolidated with the suit brought as aforesaid, against these defendants by the Trustees of the Sheppard and Enoch Pratt Hospital.

BARTON & WILMER,
Att'ys for James A. Gary and Arnold S. Hyde, Executors.

Answer of The Trustees of the Sheppard and Enoch Pratt Hospital, a Defendant, to the Bill of Complaint.

(Filed 13th May, 1898.)

ISAAC PRATT, JR., ET AL.
vs.
JAMES A. GARY and ARNOLD S. HYDE, Executors, *et al.*
} In the Circuit Court No. 2 of Baltimore City.

To the honorable the judge of said court:

The answer of the Trustees of the Sheppard and Enoch Pratt Hospital, a body corporate, duly incorporated, to the bill of complaint of Isaac Pratt, Junior, and others against this respondent and others, and in this court exhibited.

This respondent, saving all and every exception to said bill for its many errors and insufficiencies, and especially for its want of

sufficient averments to give the complainants any standing in this honorable court to authorize the court to take jurisdiction of the matters referred to in the bill; for their failure to produce the proper and necessary papers, and the untrue and perverted statement of facts, necessary to be fairly set forth before this court, and praying to be allowed the benefit and advantage thereof as fully as if the same had been availed of by demurrer in plea, for answer thereto or so much thereof as this respondent is advised is needful or proper for its answer, answering say:

First. Answering the first paragraph of the bill, this respondent admits the averments therein contained.

Second. Answering the second paragraph of the bill, this respondent having no knowledge of the truthfulness of the averments therein contained, can neither admit nor deny the same, but asks that strict proof thereof may be required.

130 Third. Answering the third paragraph of the bill, this respondent states that it was created by an act of assembly of Maryland, chapter 274 of the Acts of 1853, under the name of "The Trustees of the Sheppard Asylum," and that subsequently its original charter was by acts of the General Assembly amended, as will appear by reference to said acts, being chapter 9, of the Acts of Assembly passed at the January session of the General Assembly of Maryland, A. D. 1886, and chapter 17 of the Acts of Assembly passed at the January session of the General Assembly of Maryland, A. D. 1898; a copy of the former act as part hereof, marked "Trustees of the Sheppard and Enoch Pratt Hospital, Exhibit No. 1," by the latter of which said acts, (a copy whereof has been filed in this cause), its corporate name was changed from "The Trustees of the Sheppard Asylum," to "The Trustees of the Sheppard and Enoch Pratt Hospital."

Fourth. Answering the fourth paragraph of the bill, this respondent states that it having been incorporated, as in its answer to the preceding paragraph of the bill set forth, Moses Sheppard by his last will and testament, dated January 16th, A. D. 1855, devised and bequeathed all of the rest, residue and remainder of his estate to this respondent without condition or restriction of any kind, character or description whatsoever.

Fifth. Answering the fifth paragraph of the bill, this respondent denies the averments therein contained and states as matter of fact that by the act of assembly incorporating this respondent the object of the corporation and the purposes for which it was created are clearly defined and set forth, and it was to this respondent that Moses Sheppard subsequently devised and bequeathed a considerable portion of his estate, as is more particularly set forth in the answer to the preceding paragraph of the bill; and, further answering said paragraph, this respondent says that from said act it will appear "That it shall at all times be lawful for the General Assembly or the governor of the State, to cause proceedings to be instituted by way of bills in the name of the State, in any court of the State having original jurisdiction, for the removal of any trustee or trustees who may be guilty of fraud, embezzlement or mis-

application of the funds of the corporation, and such trustee or trustees may, after due investigation, be removed by such court, and another or others appointed by the same in his or their stead;" and this respondent further avers and insists that it is beyond the power of this court to entertain or hear any complaints as to the conduct and management of this respondent when brought by a stranger having no interest, and not even claiming an interest, in its affairs; and further answering, this respondent respectfully insists that it has always been and is now being conducted strictly in accord with the provisions of its original charter and the amendments thereto, all of which amendments have been heretofore set forth by this respondent in this its answer.

131 Sixth. Answering the sixth paragraph of the bill, this respondent denies the averments therein contained and states that the property and estate by the last will of Moses Sheppard, devised and bequeathed unto this respondent was to be the absolute property and estate of this respondent, to be managed and applied under the terms and provisions of its charter and that the same has been faithfully administered in accordance therewith.

Seventh. Answering the seventh paragraph of the bill, this respondent denies all and singular the averments therein contained, and states as matter of fact that the act of the General Assembly of Maryland whereby this respondent was incorporated, clearly defines the objects and design of the corporation, and this respondent respectfully contends and insists that the plaintiffs in this cause have no standing in this honorable court to justify, or even permit, their making the gratuitous, unfounded and untrue allegation contained in the seventh paragraph of the bill, inasmuch as the original charter fully and distinctly sets forth who are the proper persons and what are the appropriate proceedings to compel a faithful administration of the affairs and assets of this respondent should it in any particular deviate from the objects, purposes and limitations set down in its charter, and the amendments thereto, but that no such proceedings have ever been instituted against this respondent for the obvious reason that it has always been and is now being conducted in the strictest accord with the requirements and provisions of the acts of assembly creating and amending its charter.

Eighth. Answering the eighth paragraph of the bill, this respondent denies the averments therein contained, except in so far as parts thereof may be quotations from the last will of Enoch Pratt, late of Baltimore city, deceased.

Ninth. Answering the ninth paragraph of the bill, this respondent denies all and singular the averments and conclusions therein contained and set forth.

Tenth. Answering the tenth paragraph of the bill, this respondent admits that it procured the passage by the General Assembly of Maryland, and the approval by the governor of this State of an act authorizing it to adopt the name of "The Trustees of the Sheppard and Enoch Pratt Hospital," as provided by chapter 17 of the acts of the General Assembly of Maryland, passed at its January session of 1898, and avers that it has in fact, by resolution adopted the name

of "The Trustees of the Sheppard and Enoch Pratt Hospital," in conformity with the provisions of the last will and testament of the said Enoch Pratt, deceased.

Eleventh. Answering the eleventh paragraph of the bill, this respondent admits that the persons named are the alternative legatees and devisees in the last will of Enoch Pratt, named, except that this respondent has no knowledge of the averments therein contained, that I. Lowell Pratt has departed this life, and of the
132 persons who are his heirs-at-law, next of kin and personal representatives, and, therefore, neither admit- nor denies the same, but asks that strict proof thereof may be required; and this respondent in further answer to said last-mentioned paragraph of said bill, denies that said alternative devisees and legatees in said paragraph of the bill named have any interest, right, title or estate in and to any of the property, real and personal, devised and bequeathed by the will of the said Enoch Pratt, but that the same is by said will devised and bequeathed to this respondent as in said will set forth, and that this respondent is now entitled to the same.

Twelfth. Answering the twelfth paragraph of the bill, this respondent admits the allegations thereof, but in explanation of its own failure to appear on the day appointed by the orphans' court of Baltimore city for the persons interested in the estate therein mentioned to appear before it, to the end that a distribution thereof might be had, desire- to state that it not having procured the amendment to its charter authorizing a change of the corporate name in accordance with the provisions of the last will and testament of the said Enoch Pratt, by reason of the fact that the General Assembly of Maryland had not as yet convened, it felt that it would appear to be premature and untimely for this respondent to come into court as a claimant of said residuary estate, but that it had prior to said day notified the executors of said estate of its intention to comply with the provisions of the will of Enoch Pratt, and to claim his residuary estate, and that as soon as it had procured said enabling act and had, in fact, adopted the name of "The Trustees of the Sheppard and Enoch Pratt Hospital" it made immediate demand upon the executors of said Enoch Pratt, for a transfer and assignment to it of all of the rest and residue of the estate of the said Enoch Pratt, with which demand said executors have as yet not complied, and accordingly this respondent has instituted in this honorable court appropriate proceedings to compel an enforcement of its demand; and this respondent further shows that it is informed, and, therefore avers and charges, that the plaintiffs in this cause who not set up a pretended and fic-itious claim to said residuary estate, did not appear on the day so set by the orphans' court of Baltimore city, nor did they perform any act or acts until the filing of the bill in this cause indicating that they made any pretense of having or claiming an interest in said residuary estate; copies of aforementioned notification, together with the reply of the executors thereto, are filed herewith as part hereof and marked respectively "Exhibit G. A. P., and Exhibit J. A. G."

Thirteenth. Answering the thirteenth paragraph of the bill, this

respondent admits that it filed in this honorable court its bill of complaint against the said executors, the nature and purport whereof, and the relief sought will fully appear by reference to said bill, a copy whereof, marked "Plaintiffs' Exhibit G," has been filed in this cause as a part of the bill herein.

133 Fourteenth. Answering the fourteenth paragraph of the bill, this respondent having no sufficiently definite knowledge of the averments therein contained, can neither admit or deny the same, but ask that strict proof thereof may be required; and further answering, this respondent not knowing whether it be true that the persons in said paragraph of the bill referred to "claim the whole of said residue of the estate of said Enoch Pratt, on the ground that the said act of 1898, chapter 17, changing the name of 'the Trustees of the Sheppard Asylum' is unconstitutional and void, and that they are, therefore, entitled to said residue under the provisions of said Enoch Pratt's will" can neither admit nor deny the same but asks that strict proof thereof may be required, but, nevertheless, insists that the said chapter 17, of the Acts of the General Assembly of Maryland, passed at its January session, A. D. 1898, is not unconstitutional and void, but, on the contrary, that said act of assembly is constitutional and valid, and that the parties in said paragraph of the bill mentioned as being the alternative residuary devisees and legatees under the will of the said Enoch Pratt, are not entitled to the residue and remainder of his said estate, but that this respondent is the only person having any right, title, interest or estate therein, inasmuch as the said last will of said Enoch Pratt devises and bequeaths the same to it upon a condition which this respondent has fully performed.

Fifteenth. Answering the fifteenth paragraph of the bill, this respondent denies that the complainants are entitled to the residue of the estate of Enoch Pratt, deceased, but, on the contrary, avers that the said complainants are not entitled to the said residue of the said Enoch Pratt, but that this respondent is entitled to the same under the laws of Maryland.

And further answering said bill, this respondent denies all and singular the averments therein contained except in so far as the same may have been, by this, its answer, admitted or modified.

And having answered said bill, this respondent prays to be hence dismissed with its reasonable costs.

And, as in duty, &c.

THE TRUSTEES OF THE SHEPPARD
AND ENOCH PRATT HOSPITAL,
[L. S.] By GEO. A. POPE, *President.*

Witness:
JOSEPH GRAPE.

Sworn to by George A. Pope, president, &c., before John L. Hebb, justice of the peace, on the ninth day of May, A. D. 1898.

NOTE.—Exhibit marked "Trustees of the Sheppard and Enoch

Pratt Hospital Exhibit No. 1," referred to in the foregoing
134 answer and filed therewith, is a copy of the amendment to the original charter, passed at January session of Assembly of Maryland, 1886, chapter 17, and heretofore filed as an exhibit in the first case.

Exhibits G. A. P. and J. A. G., referred to in the foregoing answer and filed therewith, are as follows respectively, to wit:

EXHIBIT G. A. P.

(Filed 13th May, 1898.)

Copy.

26TH JANUARY, 1897.

Jas. A. Gary, Esq., executor.

MY DEAR SIR: Referring to our recent conversation, I beg to inform you that at a meeting held on 28th December, 1896, the following resolution was adopted, viz: that the Trustees of the Sheppard Asylum agree to accept the bequest of the late Enoch Pratt on the conditions contained in the will.

The trustees intend to take proper steps to present the matter to the legislature at its next session, and will be ready to co-operate with the executors in any way to carry out Mr. Pratt's benevolent design.

Very truly yours, etc., GEO. A. POPE, *President.*

EXHIBIT J. A. G.

(Filed 13th May, 1898.)

Copy.

JAN. 27TH, 1898.

Mr. Geo. A. Pope, pres't board of trustees of the Sheppard asylum, Baltimore.

DEAR SIR: I beg to acknowledge your esteemed favor of 26th, and am gratified to know the Trustees of the Sheppard Asylum have agreed to accept the bequest of the late Enoch Pratt upon the conditions contained in his will.

It will afford me pleasure to render all the assistance in my power to carry out Mr. Pratt's benevolent design, as connected with the Sheppard asylum.

Very truly yours, JAMES A. GARY.

135 PLAINTIFFS' EXHIBIT "F," Referred to in Bill of Complaint.

(Filed 24th May, 1898.)

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Registry of probate.

I, Elijah George, register of the probate court of said county of Suffolk, having by law the custody of the seal and all the records,

books, documents and papers of or appertaining to said court, hereby certify the paper hereto annexed to be a true copy of paper appertaining to said court and of record in the office of said court, to wit, the letters of administration granted to Lowell T. Pratt, as administrator of the estate of Isaac Lowell Pratt, late of Boston, in said county, deceased, intestate.

In witness whereof, I have hereunto set my hand and the seal of said court this seventeenth day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

[L. S.]

ELIJAH GEORGE, *Register.*

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } ss :

Probate Court.

I, John W. McKim, Esquire, judge of the probate court, within and for the county of Suffolk, hereby certify that Elijah George, Esquire, whose signature is affixed to the annexed certificate and attestation, is the register and proper certifying officer of said court, and has, by law, the custody of the seal and all the records, books, documents and papers of, or appertaining to said court, and that said certificate and attestation are in due form and entitled to faith and credit.

In witness whereof, I have hereunto set my hand, this seventeenth day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

JOHN W. McKIM,
Judge of Probate Court.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } ss :

Registry of probate.

I, Elijah George, Esquire, register of the probate court, within and for the county of Suffolk, hereby certify that John W. McKim, Esquire, whose signature is affixed to the annexed certificate is the senior presiding judge of said court, duly commissioned and qualified, and that his said certificate is in due form and entitled to full faith and credit.

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In witness whereof, I have hereunto set my hand and affixed the seal of said court, this seventeenth day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

[L. S.]

ELIJAH GEORGE, *Register.*

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Probate Court.

[SEAL.] To Lowell T. Pratt, of Brookline, in the county of Norfolk and Commonwealth aforesaid:

You are appointed administrator of the estate of Isaac Lowell Pratt, late of Boston, in said county of Suffolk, deceased, intestate.

And you are required to make and return to said probate court, within three months from the date hereof, a true inventory of all the real and personal estate of said deceased, which, at the time of the making of such inventory shall have come to your possession or knowledge;

To administer according to law all the personal estate of said deceased, which may come to your possession, or that of any person for you, and also the proceeds of any of the real estate of said deceased that may be sold or mortgaged by you;

To render upon oath, a true account of your administration, at least once a year until your trust is fulfilled, unless excused therefrom, in any year by this court.

To pay any balance remaining in your hands upon the settlement of your accounts, to such persons as said court shall direct;

To deliver these letters of administration into said court in case any will of said deceased shall be hereafter duly proved and allowed;

And also, within three months, to cause notice of your appointment to be published once in each weeks for three successive weeks in the "Boston Daily Advertiser," a newspaper published in Boston, and return your affidavit of having given such notice, with a copy thereof to the probate court.

137 Witness John W. McKim, judge of said court at Boston, this twenty-first day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

ELIJAH GEORGE, *Register.*

Separate Answer of Ellen J. O. Phinney and Others, Defendants.

(Filed 24th May, 1898.)

ISAAC PRATT, JR., and SUSANNA K. TOBEY *vs.* JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, Deceased, and Others. } In the Circuit Court No. 2 of Baltimore City.

To the Honorable George M. Sharp, judge of the circuit court No. 2 of Baltimore city:

The separate answer of Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, David G. Pratt, Edmund T. Pratt, Marland L. Pratt, Lowell Tyler Pratt, Emily Pratt, Stella Potter, and James

A. Potter, Jr., her husband; Emily L. Pratt and Lowell Tyler Pratt, administrators of I. Lowell Pratt, deceased, respectfully shows unto your honor:

1. That said defendants admit all the facts and averments set out in the first, second, third, fourth, fifth, sixth, seventh and eighth paragraphs of the plaintiffs' bill.

2. These defendants admit the averments of the ninth paragraph of said bill so far as they allege that the said devise and legacy to the said corporation and Trustees of the Sheppard Asylum is utterly invalid and void, for the reason that it attempts to create in said corporation a trust that cannot be enforced; that it attempts to create a perpetuity, and that it attempts to create a trust in favor of a class of beneficiaries, the indigent insane, too indefinite for the enforcement of said trust in their favor, but denies the averment of said paragraph nine of said bill that the said residuary estate remains undisposed of by the will of said Enoch Pratt, but avers that on the failure of said devise and legacy to the Trustees of the Sheppard Asylum, the right and title to the whole interest estate have vested in these defendants as the residuary devisees and legatees of the said Enoch Pratt, and deny the right and title thereto have vested in the said plaintiffs as the heirs and next of kin of the said Enoch Pratt.

138 3. These defendants admit the averments of paragraphs 10, 11, 12, 13 and 14 of said plaintiffs' bill.

4. And these defendants deny the averments of paragraph 15 of said plaintiffs' bill.

5. And these defendants further answering said bill aver, that while the said Trustees of the Sheppard Asylum have assented to the condition and bargain mentioned in the will of said Enoch Pratt as far as they could lawfully do so, and have procured the passage of an act by the legislature of Maryland, and its signature by the governor, changing the name of said corporation from "the Trustees of the Sheppard Asylum," to "the Trustees of the Sheppard and Enoch Pratt Hospital," these defendants aver that the said trustees had no authority or right to assent to such condition or enter into such bargain, and that their act in doing so is *ultra vires*, and that the said legislature of Maryland had no authority to pass an act making such change of name, and more especially no authority to make such change as part of a bargain of the kind set forth in the will of the said Enoch Pratt, deceased, and that their said act is utterly and entirely void.

6. And further, these defendants show unto your honor, that the said corporation, the Trustees of the Sheppard Asylum, was incorporated under the act of the legislature of Maryland, passed in the year 1853, being No. 274 of the Acts of Assembly of that year, which act was procured from the said legislature of Maryland by the aforementioned Moses Sheppard who contemplated the founding of an institution under the powers granted in said act, leaving to it the large part of his fortune, and that the said Moses Sheppard did subsequently by his will give to said institution a large sum of money, which constitutes the whole endowment of the said institution and

the whole property and belongings of said corporation, and that the name of said corporation constitutes an essential part of the contract under which the said Moses Sheppard left said money to said corporation, and that the said act of assembly of Maryland, being chapter 17, of the Acts of Assembly of Maryland, A. D. 1898, is therefore a law in violation of a contract and as such is contrary to article 1, section 10, of the Constitution of the United States, and is utterly unconstitutional and void therefore, and the said residuary estate of the said Enoch Pratt, both real and personal, has therefore vested in these defendants under the terms of the will of the said Enoch Pratt, deceased.

And the said defendants having fully answered said bill, pray that the same be dismissed with costs to these defendants.

And, as in duty.

ABNER McKINLEY,
E. J. D. CROSS,
Sols. for Defendants Ellen J. O. Phinney et al.

139 *General Replication.*

(Filed 24th May, 1898.)

ISAAC PRATT, JR., and SUSANNA K. Tobey
vs.
JAMES A. GARY and ARNOLD S. Hyde, Executors, *et al.*
} In the Circuit Court No. 2 of Baltimore City.

The plaintiffs join issue on the matters alleged in answers of The Sheppard and Enoch Pratt Hospital, and also in answer of James A. Gary and Arnold S. Hyde, defendants, so far as the same may be taken to deny or avoid the allegations of the bill.

W. IRVINE CROSS,
Solicitor for Plaintiffs.

26th May, 1898.—Petition of plaintiffs for leave to take testimony, and order of court thereon granting the same, was filed in said cause.

Order of Court to Close Testimony, &c.

(Filed 26th May, 1898.)

ISAAC PRATT, JR., and SUSANNA K. Tobey
vs.
JAMES A. GARY and ARNOLD S. Hyde, Executors, *et al.*
} In the Circuit Court No. 2 of Baltimore City.

Ordered by the court on this 26th day of May, 1898, that the testimony in the above case be closed and returned on or before the 13th day of June, 1898, and that the above case be set for hearing on that day.

GEORGE M. SHARP.

140 *Depositions.*

(Filed 13th June, 1898.)

GEORGE A. POPE, a witness called and sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By the EXAMINER:

1 Q. State your name, residence and occupation.

A. George A. Pope; city of Baltimore; president of the board of trustees of the Sheppard and Enoch Pratt hospital.

2 Q. Do you know the parties to this suit?

A. I do not know Mrs. Tobey; I do know Mr. Isaac Pratt.

Mr. CROSS:

3 Q. Mr. Pope, you are one of the Trustees of the Sheppard and Enoch Pratt Hospital, are you not?

A. Yes, sir.

4 Q. And you are familiar with the properties and the estate owned by that institution, are you not?

A. Yes, sir.

5 Q. Up to the time when Mr. Pratt's will was made, had there been any other legacy to the institution, or endowment of any kind, except that of Mr. Sheppard's?

A. Yes, sir; there are two old ladies who have agreed to donate to the Sheppard asylum, at that time it was the Sheppard asylum, trustees, some property for the purpose of endowing a free bed at the institution at their death.

6 Q. These ladies have not died?

A. I think one of them died recently; I think one of them died here recently, but we have never been officially informed of it; I think I heard something about it; the other one is still living.

7 Q. The property has not yet vested in the Sheppard asylum, has it?

A. No, sir.

8 Q. Has there been any other endowment of the institution?

A. No, sir.

9 Q. Mr. Pope, the asylum was open for the reception of patients on the 25th day of November, 1891, was it not?

A. In the fall of '91; I think that was the date, yes, sir.

10 Q. I got it from your report.

141 A. Well, that is no doubt correct; I am speaking from memory only.

11 Q. Do you remember the date of Mr. Sheppard's death?

A. 1857; February.

12 Q. That is near enough; February, 1857; will you kindly look at the paper I now hand you, and state to the examiner if that is the form of bond required as a condition of the admission of a patient? (Handing witness paper.)

A. Yes, sir; I recognize this as being the form of bond.

Mr. WHYTE:

13 Q. Is it the same as the one now in use?

A. Yes, sir; that is the same.

Mr. WHYTE: Of course you limit it to prior to the change of the title of the corporation?

Mr. CROSS: Oh, yes, sir.

A. Yes, sir; we have a new one printed somewhat different from this; but this is what we have been using; the words "quarterly in advance" were changed to "monthly in advance" some time ago, you understand, not requiring quarterly payments in advance, but monthly payments.

14 Q. Mr. Pope, the statement introducing that bond is taken from your annual report, is it not?

Mr. WHYTE: You mean "in all cases a bond must be signed, of which the following is a copy"?

Mr. CROSS: Yes, sir.

A. Yes, sir.

15 Q. And the statement following it is also from the report?

A. Yes, sir.

16 Q. Patients are never admitted then without the signing of a bond of that kind, are they?

A. Sometimes they are.

17 Q. Then that statement, "in all cases, a bond must be signed," is not strictly regarded?

A. It is not always carried out, because sometimes it is impractical for the reason—may I explain that?

Mr. WHYTE: Certainly.

A. (Resuming.) For the reason that a patient is sometimes brought to the hospital, and it is necessary to take them in at once, and we cannot turn them out of doors before this formality is complied with, and then as soon after that as we can, we have the bond signed.

NOTE.—The copy of the bond referred to, is herewith filed with the examiner, marked "Plaintiffs' Exhibit Examiner G. A. P., No. 1."

142 18 Q. Mr. Pope, on page 2 of the second annual report, I haven't it here, but I take this extract from Dr. Brush's report, after speaking of the erection of the cottage that he was putting up, Dr. Brush says, "I think it safe to predict that there will soon be several patients who will desire to take advantage of the opportunities afforded by this cottage, for seclusion, homelike surroundings, and at the same time convenient access to medical care;" do you remember that expression?

A. I think it is very likely it is true; I do not dispute that at all; I think it is more than likely it is true; I remember the general tone of the statement.

19 Q. What I wished to ask you was, what is meant by the statement "I think it safe to predict that there will soon be several

patients who will desire to take advantage," &c.; does that mean who will be willing to pay a proper rent for that convenience?

A. Undoubtedly; yes, sir; illustrating that now, there was a lady who came here from Chicago to Dr. Kelly, to have an operation performed, and she had been given great quantities of morphia, which resulted, as Dr. Kelly thought, in her brain being disordered, and he recommended that she be sent to the Sheppard for treatment; and after she got well enough from her operation, she was sent out there; her mother accompanied her from Chicago, and she was very anxious to find some place where she could be near her; she did not want to go to the asylum building, and if that cottage had been erected she would have occupied it; she could not find any place to suit her except the Chattolanee hotel, and that was a long distance off; and the mother would have occupied that cottage if it had been ready; the cottage has been occupied since by the wife of a very wealthy patient who was there for some time; she wanted to be near her husband, and she went there and kept house for a while; I think she paid us $100 a month for that and the service; it is a very handsome stone cottage.

20 Q. Has it been occupied by any other patients or the friends of patients, besides the one that you speak of?

A. No, sir; that was the only occupant that I remember.

21 Q. Are there any other facilities in the institution for accommodating wealthy patients who are willing to pay for special accommodation?

A. Yes, sir; there are abundant facilities for them.

22 Q. Have there not been a great many patients at the asylum who could not be described as indigent insane?

A. Oh, yes, sir.

23 Q. Have not a great many of the patients been people who paid a substantial price and received a very substantial equivalent for the price that they paid?

143 A. Well, "a great many" is such a comparative term, in that connection, that I scarcely know how to answer that question; very much less than half the patients we have had there, I should say no to; now I can illustrate that if you want a full information on the subject, by a memorandum I have in my pocket; I did not know how far this examination would go, and I brought it with me, and I can show you just about how the patients stand on the first of June; we had this made up for our regular meeting.

24 Q. You mean this year?

A. Yes, sir; and this is somewhere about the average of the condition we run along in; now, on the first of June we had 98 patients in the house; shall we put this in the answer?

Mr. Cross: Yes, sir; just as you desire.

A. (Resuming.) Of course, I can just give you a copy of this.

Mr. Cross: I would like to look at it before you file it.

Note.—The paper referred to is herewith filed with the examiner, marked "Plaintiffs' Exhibit Examiner, G. A. P., No. 2."

A. (Resuming.) Now, I will explain this, if you want to get at

the exact facts of the case, that the average cost of these patients for the last year, putting in our whole expenditures, was $17.00 a week, and that is the reason I say that the larger number of them did not pay their expenses, the average cost of the total of our expenditures.

25 Q. Mr. Pope, there is filed with governor, by the trustees, every year, a statement of the financial workings of the corporation and of the asylum, is there not?

A. Yes, sir.

26 Q. In that the expenses of new buildings constructed, and additions to the grounds and improvements of that nature are charged to the estate, are they not?

A. They are charged to the building account.

27 Q. But is not that building account charged as an account of the trustees and not as an account of the asylum?

A. Yes, sir.

28 Q. There is kept a separate account of the workings of the asylum itself, is there not?

A. Yes, sir.

29 Q. What are charged to it, Mr. Pope?

A. Every expense except increase of the plant as will show, if we should buy a new engine, or if we should put up a new building, that would not be charged to the asylum expenses; everything else; since we closed the building account after we got affairs in operation, got our house furnished, everything now applying
144 to running the institution is called "running expenses," and are charged to that, unless we go to work and put something new in, then we charge that to the other account.

30 Q. To the trustees' account?

A. Yes, sir; I mean to say that all the money we get from patients and all the money that comes from the trust estate goes into the asylum account, and all items that we get are charged to that, except such articles as we may buy that would be a new matter belonging to the plant.

31 Q. Yes; belonging to the plant?

A. Yes, sir.

32 Q. Work done in the improvement of the grounds would be treated as addition to the plant, would it not?

Mr. WHYTE: You mean daily work?

Mr. CROSS: I mean any ornamentation or improvement.

A. If we laid out an entirely new road, yes, sir; but keeping the present roads up and keeping the borders clean, and repairing the roads, as we are constantly doing, just the wear and tear, that is a part of the running expenses.

33 Q. That is a part of the running expenses?

A. Yes, sir.

34 Q. And that is charged to the asylum account?

A. Yes, sir; which is now very small.

35 Q. Which?

A. These expenses you are just speaking of.

36 Q. From your experience, is the larger gross revenue derived from the income of the estate, or from the payments of patients?

A. From the patients.

37 Q. Mr. Pope, since this institution was opened for patients in 1891, there has been a continued expense in the improvement of its plant, has there not?

A. Yes, sir.

38 Q. Without asking you to be accurate, has this expense not about used up the net revenue of the estate itself as distinguished from the receipts?

A. No, it has not; we have had to draw on the revenue of the corpus every year to help pay the expenses of the asylum.

39 Q. Are you sure about that, Mr. Pope?

A. We had a deficit charged in our books of $36,000 for
145 these 7 years, and I think every year; now, I may be mistaken as to one year; last year the deficit was $7,000, and I think, with the exception of one year, every year we have a deficit.

40 Q. Well, will that show in these reports?

A. It ought to.

41 Q. It ought to?

A. Yes, sir; these reports are not made in the shape of balance-sheets, the usual profit and loss balance-sheets; they merely show the receipts and expenditures on the two sides.

42 Q. Now for the year 1893; did not the asylum account show the payment of all of its expenses, and a payment to the trustee account of $5,000?

A. I cannot answer that from memory; but I do not think it was so.

43 Q. You do not think it was so?

A. I do not think so; my general impression is that every year we have had a deficiency.

44 Q. Now in the asylum account for the year ending November 30, 1896, I find this entry, "trustees' account, amount paid trustees' account, net $376.63;" what would be the meaning of the word "net" used in that account?

A. I suppose it means the difference between what we received and what we had paid; the difference; the word "net," I suppose means the difference we paid as $376.63, but that I do not speak from knowledge of; I only infer that in answering your question; I will look at that and see when I go back to the office; that is 1896, is it?

45 Q. Yes, sir; it is for the year ending November 30, 1896.

A. Yes, sir; for your information—not as an answer to the question, I will say that during the year some months the revenue from patients is not sufficient to pay off at the end of the month all expenditures; then Mr. Grate will take some money out of the trustees' bank and put it in the asylum bank and pay it off, and then another month the asylum account will grow, and he will restore that, so he uses one fund to help the other along until the end of the year, as it is possible at the end of the year that might have been the payment back and forth.

Mr. HOMER:

46 Q. Do these accounts show any bills payable, any money borrowed?

A. Yes, sir; we have had to borrow money to make payments.

Mr. CROSS:

47 Q. In the trustees' account, among the receipts, there would occur occasionally this entry, "bills payable, sundry notes paid and discounted; I am not a very good book-keeper, and I would like to know what is the meaning of "sundry notes paid and discounted;" does that refer to different classes of notes or to the same?

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A. The same class of notes; let me go back for a moment now and explain; in 1891 we determined that we would not wait to open the institution for five years so as to allow the income to increase sufficiently to furnish it, and put it in order, and we concluded to borrow the money from ourselves, and go to work and furnish it, and open it that much quicker, so in that way we have a debt outstanding, the money that we borrowed; not however, impairing the corpus of the estate, because the corpus has swelled up, but rather than sell anything, we simply borrowed the money in the hopes that we would refund it afterwards; we borrowed it from ourselves.

48 Q. What do you mean by borrowing it from yourselves?

A. We borrowed it from the trustees, the individual trustees?

49 Q. From the individual trustees?

A. Yes, sir; sometimes we borrowed it from the bank, and we paid off the banks' loan, and in order to avoid having notes coming due, and having to pay them in a fixed time, we made loans from the different trustees.

50 Q. Now, in this year, for instance, that I speak of, "sundry notes paid or discounted, $23,500;" that would cover proceeds of notes that you had discounted at the bank by the trustees; but what is the meaning of "sundry notes paid"?

A. Well, we would take up one and have another one discounted to pay it with.

Mr. WHYTE:

51 Q. It means renewed; yes, sir.

A. Renewed notes; yes, sir.

Mr. CROSS:

52 Q. Well, you do not in that entry get any revenue from notes being paid, do you?

A. No, sir; we get a note discounted to pay another one with.

53 Q. And that entry gives the result?

A. It gives the result; yes, sir.

Mr. WHYTE:

54 Q. It means it is not an increase; it gives the new note dis-

counted and the proceeds are taken to pay the old one; it is to show the transaction.

A. You know these investments are constantly changing, Mr. Cross; stocks that we owned, or bonds, or ground rents, or
147 something of the kind, and vacant lots of ground that have been improved, they come in in different shapes and they are constantly changing, and they always do in such an estate as that.

Mr. CROSS: I think that is all.

Cross-examination.

Mr. WHYTE:

1 X Q. Now, Mr. Pope, you have been asked in regard to one of the reports of the trustees made prior to the first of January, 1898; let me ask you whether what I find in the Sixth Annual Report — as follows:

"Reference was made in the last report to the impression which seemed to prevail that little or no charitable work was done at this institution. The intention of Moses Sheppard, as reiterated in many of his letters and written memoranda was to establish an asylum, the conduct of which would involve a large expenditure. It was to be an expens-e institution. Those who could do so were expected to 'pay for the benefits derived.' And yet those whose means were limited were also to be received as far as the resources of the institution would permit.

"In carrying out these directions you have been able to maintain as free patients during the last year over ten per cent. of the entire number received. Over one third of the other cases admitted have been maintained at a rate below half the actual cost of care and treatment and this has not been by any means an exceptional year in the history of the work of the asylum.

"Such were the objects which led to its establishment, such the manner in which these objects have been 'carried out.'"

Is that a true statement of the workings of the institution?

A. Yes, sir.

2 X Q. Mr. Pope, there has been reference made in the bill filed in this case, in which you have been examined to a letter said to have been written by Mr. Sheppard on the 16th of January, 1855; have you read the clause in the bill relating to that letter?

A. I have.

3 X Q. Does it give the entire section or the paragraph of Mr. Sheppard's letter as it is quoted in the bill?

Mr. CROSS: Of course this is examination-in-chief.

Mr. WYTHE: Well, just to save time.

WITNESS: Please read me that question.

(Question repeated.)

A. It does not.

148 4 X Q. Look at the paper I now show you, and state whether or not that is a correct copy of the letter written by Mr. Sheppard? (Handing witness paper.)

A. (After inspection.) It is.

NOTE.—It is understood that the original of this letter is to be produced before the court.

5 X Q. In this letter there is this language as to the objects for which Mr. Sheppard wishes his money used: "First, for the poor of the society;" what society did he refer to?

A. The Society of Friends.

5 X Q. "Secondly, for such of the society as are able to pay, and then for the poor indiscriminately; afterwards the trustees will use their discretion;" has that direction been pursued since you have been managing the asylum?

A. Yes, sir.

NOTE.—The copy of the letter is herewith filed, marked "Defendants' Exhibit Examiner G. A. P., No. 3," and it is agreed that the original is to be submitted to counsel on the other side for their inspection; and to be produced in court at the hearing of the case.

6 X Q. Did you compare that with the original of the letter of Mr. Sheppard?

A. I think I did; but I am so thoroughly familiar with it that I know it is correct.

7 X Q. You are positive it is a correct copy of the original?

A. Absolutely so; it was made in our office.

8 X Q. And the agreement is that the original will be produced at the trial of the cause?

A. Yes, sir.

9 X Q. Mr. Pope, at the time the answer was filed in this case, it was stated that nobody appeared to claim the estate because the legislature had not met; will you state whether or not, to your knowledge, anybody did appear at the distribution on the distribution notice of March 25, 1897; and if so, whom, for the Sheppard asylum?

A. Joseph Grate, secretary for the trustees, appeared at the orphans' court on the 25th of March, 1897; this is the record in the orphans' court.

NOTE.—The copy of the record of the orphans' court is herewith filed with the examiner, marked "Defendants' Exhibit Examiner G. A. P., No. 4."

10 X Q. Mr. Pope, is the bond required in all cases, even where the patients are received as free patients?

A. Yes, sir; will you allow me to explain?

Mr. WHYTE: Yes, sir; any explanation you desire to make.

A. The principal object of that bond is not so much to get the money from the patient as it is to have some responsible
149 person to receive the patient from us when we want to discharge him; we take all patients on probation; the most im-

portant feature of that bond is for the institution to have some responsible person to whom to apply to receive the patients when we want to get rid of them; the patients are taken in on probation; the idea is that it is intended as a curative establishment, and we tell almost everybody verbally, when they come, that we will take them for three months or for four months, and when the doctor decides whether they ought to stay no longer, or if we need their room for another patient who is curable; if we want their room, we want to be in a position where we can have some one to take them; we reserve the right of discharging them at any time; of course there are other features involved like breakage, and destroying clothing, and those kinds of things.

11 X Q. The reports to which counsel has called your attention are reports made to the governor under act of assembly, are they not?

A. Yes, sir, they are required by the charter, under the by-laws, the first of January.

12 X Q. How is that cottage, to which reference has been made, occupied in the last three or four years?

A. It has been occupied by an attendant, a nurse of the institution, to take care of it and keep in order, and have it ready for an occupant at any time.

12 X Q. But there have been no patients for some time in the *in the* cottage, have there?

A. No, sir; it is ready at any time for them.

Mr. WHITE: That is all.

Mr. CROSS: I reserve the right to ask in chief about these reports, if I want to; I will just ask a few questions in cross-examination of matters brought out by the governor.

Mr. CROSS:

1 X Q. Has the building put up by the trustees been in the farm-house style?

A. No, sir.

2 X Q. Now has there been a preference given to the poor of the Society of Friends?

A. Always.

3 X Q. Are there any poor Quakers?

A. A very few; we have, I think, only one.

4 X Q. Only one?

A. I think so; I am not sure; there may have been more, but I think there is only one at the present time, a young man from Cecil county.

5 X Q. The whole number, from the beginning, has been very small, has it not?

150 WITNESS: Of Friends?

Mr. CROSS: Yes, sir.

A. Oh, yes, sir; I do not think there have been more than three; I have no recollection of more than three or four perhaps.

6 X Q. As to the patients who are able to pay, how many Quakers have there been?

A. I cannot answer that question; no, I cannot answer that question.

7 X Q. Have there been any material number?

A. I think only two or three.

8 X Q. You think only two or three?

A. Yes, sir; altogether; I do not think there have been more than three or four Quakers in the institution all told; I think not more than that, and those who could pay have paid; I think there has only been one who has not paid.

9 X Q. And as I understand you, only two or three altogether?

A. Yes, sir; there have only been three or four altogether; I said three or four.

HORACE PRATT TOBEY, witness called and sworn on behalf of the complainants, testified as follows:

Direct examination.

By the EXAMINER:

1 Q. State your name, age, residence and occupation.

A. Horace Pratt Tobey; my age is 60; my residence is Wareham, Mass.; my occupation, manufacturer.

Mr. CLARK:

2 Q. Mr. Tobey, did you know the late Enoch Pratt of Baltimore city?

A. I did; yes, sir.

3 Q. Are you the Horace P. Tobey, that is named in his will?

A. I am.

4 Q. Do you know Mr. Isaac Pratt, of Massachusetts?

A. I did.

5 Q. How long did you know him, or up to what time?

A. Well, I knew him from my childhood until I was 26 years old; he died in 1864; I was born in 1838.

6 Q. Where did he reside, Mr. Tobey?

151 A. In the village of Titticut, which is a part of the town of Middleboro.

7 Q. In the State of Massachusetts, of course?

A. In Massachusetts; yes, sir.

8 Q. What relation did he bear to you?

A. He was my grandfather; my mother's father.

9 Q. Tell the examiner the name- of his children as far as you knew them.

A. Jane Gurney—Gurney was her middle name—Enoch, Susannah Keith, Isaac, David—I am not certain as to David's middle name—and Nathan F. C.; I think I have named all that I know personally.

10 Q. Were there any that you did not know personally?

A. Yes, sir; there were two children who died very young and whom I never saw.

11 Q. What were their names, Mr. Tobey?

A. Mary Field, and I think the other was Benjamin; Jeremiah, not Benjamin; Jeremiah, he died as a child.

12 Q. Well, did Mary Field die?

A. Mary Field also died as a child.

13 Q. State in your own way any facts that you know as to the intercourse of Mr. Isaac Pratt with the children that you have named, as known to you, in his lifetime.

A. From my childhood until my grandfather died we met annually at his house to celebrate a family Thanksgiving; on that occasion his five children were always present, and their children were also present.

14 Q. What was the nature of these gatherings?

A. They were strictly family gatherings, consisting of the descendants of Isaac Pratt.

15 Q. State, if you know, how Isaac Pratt spoke of these different people that you have mentioned.

A. Always with affection and respect, being his children; I am speaking of his five own children now.

16 Q. Have you heard him speak of them as his children?

A. Yes, sir; frequently.

17 Q. And have you heard him speak of Enoch Pratt and his child?

A. Yes, sir.

18 Q. And Susannah Keith?

A. Yes, sir.

152 19 Q. Was that at a time when she was Susannah Keith Tobey?

A. Yes, sir; she was my mother, and of course it was in my lifetime when I heard it.

20 Q. Did you know Enoch Pratt?

A. I did; yes, sir.

21 Q. How long did you know him?

A. From my childhood until the time of his death.

22 Q. State in your own way the nature of the intercourse between Enoch Pratt and Susannah Keith Tobey.

A. It was always very friendly and affectionate; he was in the habit of coming on every summer and spending a part of the summer with her at her home at Wareham.

23 Q. How did he speak of her?

A. Always with affection, as his sister.

24 Q. You have heard him speak of her as his sister?

A. Yes, sir.

25 Q. Have you ever heard Mrs. Tobey, your mother, speak of Enoch Pratt?

A. Very frequently.

26 Q. In what way?

A. Well, as her brother; and as being interested in his doings,

and in connection with family affairs, and they were very frequently spoken of.

27 Q. Have you ever heard any allusion by her to your relationship to him?

A. Yes, sir; she always spoke to me of him, calling him by the name of "Your Uncle Enoch;" that is my uncle Enoch.

28 Q. Have you ever seen any correspondence between them?

A. Yes, sir; very frequently.

29 Q. What would be the form of address?

A. His letters always commenced "Dear Sister."

30 Q. Have you ever seen any letters from her to him?

(A pause.)

A. I have frequently known that she was writing letters to him, but I don't remember of having read the letters.

31 Q. Now, in your intercourse with Mr. Enoch Pratt, how did he address you?

A. He called me by my first name, Horace.

153 32 Q. Do you know anything of the cemetery given by Mr. Enoch Pratt to the Church of Titticut?

A. There is a cemetery there connected with the church, and my impression is that he gave it to the church, but I do not very definitely remember the time.

33 Q. Well, state any conversation that you ever had with Mr. Enoch Pratt regarding that cemetery?

A. Well, in the cemetery is the family burying ground of our family, and I at one time expressed the hope that when he died he should be buried there in that family burying ground, and he replied that his life had been passed in Baltimore, and that he was identified with the city, and he thought that he ought to be buried in Baltimore, and that he probably should be buried in Baltimore.

34 Q. Do you know anything of the death of David Pratt?

A. Yes, sir; I remember his sickness and death.

35 Q About when did he die?

A. When I was a small child; I think in 1848.

36 Q. Where was his funeral?

A. At his father's home, North Middleboro.

37 Q. Were you present at the funeral?

A. Yes, sir.

38 Q. Did you see him in his coffin?

A. Well, I undoubtedly did, but I don't remember distinctly.

39 Q. Now, the other brother Natha- F. C., I think you said?

A. Yes, sir.

40 Q. Were you present at his funeral?

A. I was.

41 Q. Where did his funeral take place?

A. In the same house, at North Middleboro, or from the same house.

42 Q. Where were they buried?

A. In the cemetery at Middleboro.

43 Q. The family cemetery?

A. Yes, sir; the family cemetery.

44 Q. Mr. Tobey, have you any family record?

A. Yes, sir; we have a family Bible.

45 Q. Produce that please before the examiner. (Book produced.) Whose property is that Bible you have in your hand?

A. It is my mother's.

154 46 Q. And you got it from her?

A. Yes, sir.

47 Q. What is the condition of Mrs. Tobey; first, what is her age?

A. She is 87 and a half, about.

48 Q. Is she confined to bed, or is she able to go about?

A. She is not confined to bed, but she had a severe fall about a year ago in which she nearly broke her hip; in fact, probably it splintered the hip-bone a little, and she never fully recovered from it; she is *about* to go around the house, but that is all.

49 Q. Now, has this been recognized as the family Bible?

A. Yes, sir.

50 Q. Now, tell what Mrs. Tobey's account to you is of this, her description of it.

A. It was her mother's Bible and was kept as a family Bible by her father and mother at their home in Middleboro until the time of their death, and after her mother's death it was taken by my mother, and has been kept by her ever since.

51 Q. It is the family Bible of the Pratts in the possession of your branch of the family?

A. Yes, sir.

52 Q. Will you open it please (witness opens the book); now, Mr. Tobey, there is interleaved in this two leaves of paper different from the paper of which the book is made; state how long you have been familiar with the existence of these in that Bible?

A. Well, I don't know exactly when these were inserted; they consist of common letter paper upon which memoranda have been made by my mother in her own handwriting; it has been there for some years, but I do not know exactly when it was put in there.

53 Q. What I wished to know was did you know of the existence of this in that Bible before the death of Mr. Enoch Pratt?

A. No, sir; I did not; I didn't know when my mother — them in there.

54 Q. When did you first find these leaves in there?

A. Last Friday.

55 Q. On the first page of the family record, marked "page 677," I find the entry, "Isaac Pratt married Naomi Keith 19th of May, 1904;" do you know the handwriting of that?

A. No, sir; I cannot identify it.

155 56 Q. Then we have this entry in a different handwriting. "George L. Oaks married to Jane G. Pratt, March 16, 1831;" do you know that handwriting?

A. I think it is the handwriting of Mrs. Oaks; it looks similar to it.

57 Q. Who was Mrs. Oaks?

A. She was a daughter of Isaac Pratt, her name having been Jane Gourney; one of the children of Isaac Pratt; she married George L. Oaks, March 16, 1831.

57 Q. Did you know Jane Gurney?

A. Oh, yes, sir; I knew her; she lived in our family for many years.

59 Q. When did she die?

A. I think about 1834.

60 Q. Where was her funeral?

A. Her funeral; she was buried at Mt. Auburn, near Boston; her funeral took place from the house of her niece, the daughter of Isaac Pratt, Jr.

61 Q. Were you present at the funeral?

A. I was.

62 Q. Do you think this is her handwriting?

A. It looks similar to her handwriting; yes, sir.

63 Q. Now, "Joshua P. Tobey, married to Susannah K. Pratt, October 12th, 1836"?

A. Yes, sir.

64 Q. That is in the same handwriting, isn't it?

A. No, sir; I should think it was a different handwriting.

65 Q. Whose handwriting is that?

A. That I cannot identify; the other was my mother's; the one which you have just read.

66 Q. Then, "Enoch Pratt married Maria L. Hyde, August 1st, 1837;" do you know that handwriting?

A. No, sir; I do not *not;* that is Enoch Pratt of Baltimore, lately deceased.

67 Q. Then, "Isaac Pratt, Jr., married to Hannah Thompson, June 9th, 1840;" whose handwriting is that; that is different?

A. Yes, sir; I do not recognize it.

68 Q. You do not know that handwriting?

A. No, sir.

156 69 Q. Now, on the next page, on the top of page 678, you have "Isaac Pratt, born March 6th, 1776;" you do not recognize that handwriting at all?

A. No sir.

70 Q. "Naomi Pratt, wife of Isaac Pratt, born September 11th, 1785;" you do not recognize that handwriting?

A. No, sir.

71 Q. "Jane J. Pratt, born March 16, 1805;" do you recognize that handwriting?

A. No, sir.

72 Q. Do you recognize any on that page?

A. No, sir.

73 Q. Now, you have "Enoch Pratt, born September 10th, 1808;" do you recognize that?

A. It is very similar to the handwriting of Enoch Pratt; not exactly as it was in his old days, but there is a strong similarity to his handwriting as it is in the entry of "Jane Pratt" above; but I cannot identify it as being his.

74 Q. "Sussannah Keith Pratt, born January 15, 1809?"
A. That is my mother, but I do not recognize the handwriting.
75 Q. "Isaac Pratt, Jr., born June 27th, 1814;" do you recognize that one?
A. No, sir.
76 Q. "Jeremiah Pratt, born January 23, 1817;" do you recognize that writing?
A. No, sir.
77 Q. "David Gurney Pratt, born December 19, 1819?"
A. I do not identify that.
78 Q. "Nathan F. C. Pratt;" do you recognize that?
A. That is very similar to the handwriting of Nathan Pratt, but I do not identify it.
79 Q. "Mary Field Pratt, born October 29th, 1827;" do you know whose handwriting that is?
A. No, sir; I cannot identify it.
80 Q. Now, on page 679, "Jeremiah Pratt, died February 26th, 1823;" do you know that handwriting?
A. No, sir.
81 Q. "Mary Field Pratt, died January 1st, 1829;" do you recognize that?
A. No, sir.
157 82 Q. "David Gurney Pratt, died November 23, 1849?"
A. That looks very similar to my handwriting as it was when I was a boy, but I have no recollection of having made the entry apart from that.
83 Q. You cannot identify it as your own handwriting?
A. No, sir.
84 Q. "George L. Oaks, died February 8th, 1851;" do you know that handwriting?
A. It is very similar to the handwriting of Mrs. Oaks, that is of Jane Gurney Pratt, his wife.
84 Q. "Nathan Frederick Caswell Pratt, died December 22d, 1878, aged 56 years;" do you recognize that?
A. No, sir; I do not recognize that.
85 Q. Now, on the next page, 680, is the deaths, is "Isaac Pratt, died December 3d, 1864, in his 69th year;" in whose handwriting is that?
A. I do not identify it.
86 Q. "Naomi K. Pratt, died January 28th, 1857, aged 81 years;" do you recognize that?
A. I do not recognize the writing there; no, sir.
87 Q. Now, on the same page, on the other side, under the deaths, is "Agatha Keith, died in her 67 years, March 28th, 1819;" do you recognize that?
A. No, sir.
88 Q. "Jeremiah Keith, died December 31, 1822;" do you recognize that?
A. No, sir.
89 Q. "William Pratt, died June 5th, 1808, aged 62;" his wife died "January 4th, 1816;" whose handwriting is that?

A. It looks like Mrs. Oaks' writing, but I cannot say that it was hers; but I wish to say that I am not familiar with the handwriting of either my grandfather or my grandmother; I do not know that I ever saw the handwriting of either of them.

90 Q. Now, on this sheet that has been inserted, there is an entry of the marriage of Isaac Pratt and Naomi Keith, and George L. Oaks and Jane Gurney Pratt, and Joshua Tobey to Sussannah Keith Pratt, and Enoch Pratt to Maria Eliza Pratt, and Isaac Pratt, Jr., to Hannah Thompson, June 9th, 1840; in whose handwriting are these?

A. They are all in my mother's handwriting, undoubtedly written by her.

158 91 Q. Did she ever give you any account of her writing those?

A. No, sir; I do not know how long they may not have been in the book.

92 Q. Now, on the next page is marked "deaths," the first being "Isaac Pratt, died 89, December 3d, 1864;" whose handwriting is that?

A. My mother's.

93 Q. "Naomi, his wife, died January 28th, 1867, aged 81?"

A. That is mother's handwriting.

94 Q. Then below that is put the parents, "Agatha Bryant Keith, died March 28, 1819"?

A. That is mother's handwriting.

95 Q. "Jeremiah Keith, died December 30, 1822;" "William Pratt, died June 4, 1808, aged 62; Mary King, his wife, died January 4, 1816;" in whose handwriting is that?

A. My mother's.

96 Q. Then comes the heading of children's deaths, in the same handwriting: "Jeremiah Pratt, died February 26, 1823; Mary F., died January 1st, 1829; David G., died November 23, 1848; Nathan Pratt, died December 22d, 1878; Mrs. Jane G. P. Oaks, died October 29th, 1884;" in whose handwriting are these?

A. These are my mother's.

97 Q. Mr. Tobey, do you know Mr. Isaac Pratt, Jr.?

A. Yes, sir.

98 Q. Where does he live?

A. He lives in Boston; Alston, a village in Boston.

99 Q. What is his age; I will not ask you to prove his age, but he is a very old man?

A. Yes, sir; he is a few years younger than my mother; he must be about 84 years old.

100 Q. What is his condition, Mr. Tobey?

A. He is rapidly failing, and probably cannot live but a short time; he is in bed.

101 Q. He is confined to bed entirely?

A. He is bed-ridden, yes, sir.

102 Q. Do you know anything of the intercourse between Mr. Isaac Pratt and Mr. Enoch Pratt?

A. Yes, sir.

103 Q. Well, what was it.

A. Very friendly and affectionate; Mr. Isaac Pratt would
159 generally come down to our house while Mr. Enoch Pratt was there in the summer, and spend part of the time he was there with him and my mother.

110 Q. How did they address each other?

A. As Enoch and Isaac.

105 Q. How would they speak of each other?

A. As brothers.

106 Q. Have you heard Enoch Pratt speak of Isaac Pratt as his brother?

A. Yes, sir; frequently.

Mr. CROSS: I believe that is all.

Cross-examination.

Mr. WHYTE:

1 X Q. Mr. Isaac Pratt, Jr., you think, is about 84 years of age?

A. He is about that; I cannot give you his exact age, but he is very close to it.

2 X Q. He was born in 1814, so he would be about that?

A. Yes, sir.

3 X Q. Is he a little younger than your mother?

A. Yes, sir.

4 X Q. And your mother is 87?

A. Yes, sir; 87 last January.

5 X Q. You say his condition of health is very bad?

A. Yes, sir.

6 X Q. What is his mental condition?

A. Well, I haven't seen him personally for several months, and I do not know that I can say.

(A. As brothers.

106 Q. Have you heard Enoch Pratt speak of Isaac Pratt as his brother?

A. Yes, sir; frequently.

Mr. CROSS: I believe that is all.

Cross-examination.

Mr. WHYTE:

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A. Yes, sir.

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A. Yes, sir; 87 last January.

5 X Q. You say his condition of health is very bad?
A. Yes, sir.
6 X Q. What is his mental condition?
A. Well, I haven't seen him personally for several months, and I do not know that I can say.)

—. ——.
A. Yes, sir.
11 X Q. Is Mr. Isaac Pratt a man of wealth?
A. Yes, sir.
12 X Q. How much do you suppose he is worth?
Mr. Cross: Objected to.

A. I have no information whatever; I cannot answer that question; he is reputed to be a man of some considerable property but I have no definite information
13 X Q. Do you know when he resigned from the bank where you last saw him?
A. Well, I should think about a year ago; I cannot answer that accurately.
14 X Q. Then he was not the president of the bank when you saw him?
A. Yes, sir; he was president at that time.
15 X Q. Well, that is more than a few months ago?
A. Three months; I don't think I said three months.
16 X Q. Well, more than a few months ago, I said.
A. Well, "few" is a relative term; I should think it was about a year ago.
17 Q. Is your mother's mental condition clear?
A. Her mind; yes, sir; her mind is clear enough, but she is easily fatigued.
18 Q. Are you the Mr. Horace P. Tobey who is named as a nephew of Mr. Pratt, and as an alternate residuary legatee under his
161 will in case the Trustees of the Sheppard Asylum had not obtained the act of assembly, which he required them to get?
A. I am, sir.
19 Q. Did you receive from Mr. Pratt during his lifetime any amount of money as a present?
Mr. Cross: I object to that question.
Witness: Shall I answer that?
Mr. Cross: Yes, sir; I just want to file the objection; you must answer the question.
A. I received some money from him; yes, sir.
20 Q. How much?
Mr. Cross: Objected to.
Witness: Am I compelled to answer that?
Mr. Cross: Yes, sir; it is objectionable but you have to answer.
Witness: Am I obliged to give the amount?
Mr. Cross: It is utterly irrelevant, but you must answer the question.

A. I don't know.

21 Q. You do not know what he gave you?

A. Yes, sir; I know what he gave me.

22 Q. Well, that is my question; how much did he give you?

A. I don't know how much money he gave me.

23 Q. I did not ask you how much money, what did he give you; either in bonds or securities or money?

A. He gave me some bonds and securities.

24 Q. How much?

A. I don't know.

25 Q. Upon your oath, you state you do not know how much he gave you?

Mr. CROSS: All this is objected to.

A. Yes, sir; I say I don't know how much he gave me.

26 Q. You do not know what he gave you?

WITNESS: Are you asking the value of the securities; I understand that to be the question.

Mr. WHYTE: No, sir; I am not asking the value of securities; what did he give you,—the securities, not what they are composed of, but what amount?

162 Mr. CROSS: I reserve an exception.

Mr. WHYTE: Of course reserve your exception, but he has to answer it.

WITNESS: Am I obliged to answer that question?

Mr. CROSS: It is a matter of private business; I think it is utterly foreign to the case.

Mr. WHYTE: I know, but everything will be foreign to the case that is not on your side; I understand all that, and that you will object to it, but I want to show by this witness that he either will tell, or is unwilling to tell, how much his uncle gave him during his lifetime; that is what I want to show.

Mr. CROSS: Yes, I understand that, Governor, but it is foreign to the case.

A. Well, if I am not obliged to tell, I refuse to tell.

Mr. WHYTE: Well, we will report you to the court.

Mr. CROSS: We reserve this question for the court.

27 X Q. Do you know how much he gave to the other alternate devisees?

A. No, sir.

28 X Q. Do you know about?

A. No, sir.

29 X Q. Did he give them $300,000 apiece?

A. No, sir; I should think not; but I do not know how much he gave them.

30 X Q. Did he give you $300,000 on the face of the bond?

A. No, sir.

31 X Q. Did he give you $200,000?

A. I decline to answer any more questions in that line; that is private business, and I don't think you have a right to ask it.

32 X Q. We will see whether we have a right or not when the court comes to act upon it.

Mr. CROSS: We will not have it go in this form; we will reserve this question for the court.

Mr. WHYTE: I will stop then and let the court pass upon it.

Mr. CROSS: What do you want to prove, Governor?

Mr. WHYTE: I want to prove that this witness gets a very large sum of money before Mr. Pratt died; I want to prove that he has liberally provided for them.

Mr. CROSS: Nobody has questioned that.

Mr. WHYTE: Yes, sir; it has been questioned.

Mr. CROSS: The fact of his having given these people money?

163 Mr. WHYTE: Yes, sir; liberally; I do not see why the gentleman cannot answer it.

A. Well, I think you are prying into my private business.

Mr. WHYTE: I am not prying into your private business; you come here as a witness in the case to defeat the Sheppard asylum, and I am unable to know what you have got as well as you know what we have got; if you do not choose to answer it we will take the case to the court.

Mr. CROSS: Mr. Tobey, while I think this question is utterly irrelevant and improper, you cannot escape answering it without taking the case to the court, which will lead to delay; if you can answer it, I wish you would, as far as you can.

WITNESS: Well, do I understand you, Mr. Cross, that if it goes to the court that the court is liable to say that he had no right to ask the question?

Mr. CROSS: The court may or may not say that, Mr. Tobey.

(A pause.)

Mr. WHYTE: I do not want to ask any disagreeable questions.

Mr. CROSS: I cannot understand then, Governor, why you pursue this.

Mr. WHYTE: I want to get this fact before the court that they were all liberally provided for, as he says in his will.

Mr. CROSS: They are willing to admit that fact.

Mr. WHYTE: Let him say so, that is all.

Mr. CROSS: He will say, liberally.

Mr. WHYTE: But I want to see what that means; Mr. Pratt has told us what he gave them; I want to know if that is the truth.

Mr. CROSS: Take it in the words of the will, then.

Mr. WHYTE: No, I will ask him the question; if he does not choose to answer let him take the consequences.

WITNESS: Suppose I answered that he had liberally provided for us.

Mr. CROSS: I cannot govern Gov. Whyte in his mode of trying the case; I think the question is utterly improper, but then before an examiner people can do things that they would not be allowed to do in court.

Mr. WHYTE: That is to say, they can ask questions that people are compelled to answer sometimes.

Mr. CROSS: No; they can take advantage of the fact that you cannot get the court's decision on an improper question.

Mr. WHYTE: Or can get the court's decision if it is proper, or improper either; very well, but I know it is proper and I will stick to it, as long as I am acting as counsel for the Sheppard asylum.

WITNESS: I would like to consult Mr. Cross for a moment.

164 Mr. WHYTE: It is contrary to all rules to consult counsel when a witness is on the stand; Mr. Cross has already told you what he thinks is right to tell you.

(A long pause.)

Mr. CROSS: Mr. Tobey, there is no way of preventing an answer to this question except to certify it to the court, which will take several days, and if you are willing to wait over here for several days, and have this question tried by the court, why you can be protected in your rights; otherwise you are obligated to answer the question as far as you can answer it.

(A long pause.)

WITNESS: Do I understand you that I am obliged to wait in Baltimore until the court decides?

Mr. CROSS: Yes, sir; you would have to stay here.

(A long pause.)

Mr. WHYTE: Mr. Commissioner, put the question again.

(Question repeated.)

A. No, sir; it did not.

33 X Q. Did he give you bonds and securities and money, which in the aggregate at their par value, amounted to $250,000?

Mr. CROSS: Objected to.

A. No, sir; he did not.

34 X Q. Did he give you in bonds or securities or money in the aggregate on their face value amounting to $200,000?

Mr. CROSS: Objected to.

(A pause.)

A. Considering simply the face values, and without any reference to the real values, it might have amounted to as much as that.

35 Q. How long before his death did he give you these?

A. Several years.

36 Q. Several years?

A. Yes, sir.

37 X Q. Do you know whether he gave the same amount to his other nephews and nieces?

A I cannot say as to that.

38 X Q. Have they never said anything to you about it?

Mr. CROSS: That is not testimony; it is hearsay.

A. No; none of them have ever told me that I know of.

39 X Q. Do you say that you have no knowledge whatever whether he gave them anything or not?

A. No, sir; I don't say that.

165 40 X Q. Well, have you any knowledge that he gave them securities?

Mr. CROSS: Objected to.

A. I think he did.

41 X Q. Then as to the amount; you have no knowledge whatever as to the amount?

A. I cannot say as to the amount.

42 X Q. They have never said anything to you about the amount?

A. I don't think they have; I don't remember that they ever did.

43 X —. Your brother Gerard never said anything to you about it?

A. He never told me how much he received.

44 X Q. And you state that you have no knowledge whatever how much your brother received?

A. Oh, I can make a guess, perhaps.

45 X Q. Well, of your own knowledge, without guessing?

A. No; I cannot tell; I don't know how much he has got.

46 X Q. Did he ever tell you that he got the same as you did?

A. No, sir.

47 X Q. Were you present when he received his?

(A pause.)

A. I think he received a package containing values; I never saw the inside of the package, and I do not know what it contained; I never saw the inside of it, and he never told me what it contained.

48 X Q. Was it at the same time you received yours from Mr. Pratt?

A. Yes, sir.

49 X Q. Got your share?

WITNESS: Are these all proper questions?

Mr. CROSS: Utterly improper.

Mr. WHYTE: That is a question of opinion; I say they are absolutely proper; Ellen J. O'Finney, is she your sister?

A. No, sir.

50 X Q. She was Mrs. Pratt, was she?

A. Yes, sir.

51 X Q. Was she present?

A. No, sir.

166 52 X Q. Were any other of your cousins present when you got the package from Mr. Pratt?

A. No, sir.

53 X Q. Who delivered the package to you?

A. The express company.

54 X Q. You got it by express?

A. Yes, sir.

55 X Q. From Mr. Enoch Pratt?

A. Yes, sir.

56 X Q. Will you give me the day when it was?

A. No, sir; I don't know that; it was some years ago.

57 X Q. Several years ago, but you do not remember the date?

A. No, sir.

57 X Q. When did you first employ Baltimore counsel to contest the right of the Sheppard asylum to this residuum of Mr. Pratt's estate?

WITNESS: Are you speaking of these proceedings now?

Mr. WHYTE: Your proceedings as devisees, alternate devisees.

A. Well, I am unable to give you the date; I don't know.

59 X Q. Can you tell what month it was; when did the legislature adjourn, the first of April?

Mr. HOMER: The 5th of April.

Mr. WHYTE: Just read the question.

(Question repeated.)

A. Well, if you can give me when Mr. Gary filed his interpleader, I can perhaps give you somewhere near it.

60 X Q. He filed it on the 10th of April, I think?

A. It must have been about that time.

61 X Q. How did you know about his filing the bill of interpleader; was it before or after he had filed it?

A. My impression is that he filed this interpleader, summoning us into court, and we took the matter up and brought it into court.

62 X Q. Had you any counsel representing you before the bill of interpleader was filed here in Baltimore?

WITNESS: Representing us where, or in what manner?

Mr. WHYTE: In Baltimore, in the case, since the legislature.

167 WITNESS: Had we ever consulted counsel in regard to our rights, do you mean?

Mr. WHYTE: No; had you anybody representing you here in Baltimore, anterior to the filing of the bill of interpleader?

A. Well, I knew our rights were in question at about that time, but whether we began before the interpleader, or after the interpleader, I cannot say.

63 X Q. Who is your Baltimore counsel in the case of the devisees, alternate devisees, claiming this fund?

A. I think it is of record, isn't it?

64 X Q. We want to know whether the same gentleman is representing the alternate devisees or heirs-at-law?

A. Well, I think his name is filed in court.

65 X Q. Well, then, you do not know who your counsel is, do you?

Mr. CROSS: You mean whose name is filed in the bill, or who is acting as counsel for him?

Mr. HOMER: The question I think is sufficiently clear.

A. Our general counsel in this case is Mr. McKinley in New York; he has made arrangements with Baltimore counsel, I think with Mr. Cross, and the records of the court will show exactly in what shape the case stands.

66 X Q. Does Mr. Abner McKinley represent your mother?

(A pause.)

A. Well, Mr. Abner McKinley was my general counsel from the beginning of the case, and has been; he has been consulted in regard to the case, and he probably has discussed it in all of its features as regards the claims of the heirs-at-law, and the claims of the devisees under the will; he was originally employed as counsel for the devisees under the will; I think it very possible that he has also discussed with me the possibility of the claims of the heirs-at-law; I do not know that I can answer that question exactly; I have discussed both features of the case with Mr. McKinley.

67 X Q. Do you or not know whether your mother has any contract in regard to the prosecution of her claim against this residue of Enoch Pratt's estate?

A. She has no written contract with anybody that I know of.

68 X Q. Has she any verbal contract?

A. Well, she is at home and almost bed-ridden, and what business has been done for her has been done through me, and as I have had several important discussions with Mr. McKinley, I suppose that one subject has been merged into the other in the matter, and I really do not know under what status the case stands.

168 69 X Q. Who has authorized him or Mr. Cross to file a bill for your mother?

A. Well, I have, doubtless.

70 X Q. Then you know what the contract is between Mr. McKinley and your mother?

A. I do not know that there is any contract, sir, at all.

71 X Q. No verbal contract of any sort?

A. No.

72 X Q. Have you any contract with him as devisee?

A. I have a general arrangement with him; that he is acting as our counsel in the matter; I have never made a written contract with him.

73 X Q. And you have no understanding what he is to get, if he succeeded in this case?

A. I presume he would get his fees.

74 X Q. But you do not know anything about the amount?

A. There is no definite arrangement.

75 X Q. No percentage?

A. No definite arrangement whatever; we passed no writings with him.

76 X Q. Have you a verbal understanding with him as to the percentage he is to get?

A. We passed no writings whatever with him.

77 X Q. Have you a verbal understanding with him as to the percentage he is to get?

A pause.

A. I do not know that I know what you mean by percentage; won't you explain that more definitely.

78 X Q. Is he to get any pay at all or is it a matter of charge?

A. He will get paid for his services as lawyers do.

79 X Q. And you have no understanding with Mr. McKinley as to the amount of pay he will get for his services?

A. It will depend upon the amount of time and work he puts into it, I suppose; I understand that to be the customary way that charges are made.

80 X Q. But there is no agreement at all?

A. No, sir.

81 Q. Entirely dependent upon your volition after the case is over?

A. I don't know; it generally depends on the lawyer's volition; I suppose he will charge what he is amind to; unfortunately the client has always not much to say about that.

169 82 Q. Now, Mr. Tobey, you cannot tell me, as I understand, who gave authority to the counsel to file this bill in behalf of your mother?

A. Yes, sir; I can tell you very definitely; I gave it, and Mr. Pratt, who was with *we*, gave it.

83 Q. You and Mr. Pratt?

A. Yes, sir; acting for ourselves, and so far as our own personal case was concerned, and acting for our father and mother in other respects; Mr. Edwin T. Pratt is general attorney for his family in all matters of business.

General question by the EXAMINER: Do you know or can you state any other matter or thing that may be of benefit or advantage to the parties to this suit or either of them; or that may be material to the subject of this your examination or the matters in question between the parties? If yea, state the same fully and at large in your answer.

WITNESS: Well, may I inquire upon what suit I am here? I received notice that I was to come here and bring the family Bible. In what suit am I testifying?

Mr. WHYTE: Isaac Pratt against Mrs. Tobey, and against the Sheppard Asylum, and against yourself, as devisee.

A. I thought, as I understand it, that I was summoned especially to identify the complainants in the suit of the heirs at-law; I do not know that I can add anything to what I have stated, except that I have frequently seen Mr. Enoch Pratt in the company of Mrs. Sussannah Keith Tobey and Mr. Isaac Pratt, Jr., the plaintiff in the case; that I have been with him in company when he has had occasion to introduce them to other people, and he invariably and always introduced one of them as his sister and the other as his brother; it was his customary form of introduction when he was introducing them to other people; I do not know that I have anything further to say bearing on this.

(The signing of his deposition by this witness is waived by agreement of the solicitors for the respective parties.)

HENRY G. F. SIEMS, witness called and sworn for the plaintiff, testified, as follows:

Direct examination.

By the EXAMINER:

1 Q. State your name, age, residence and occupation.
A. Henry J. F. Siems; 43 years; 2033 E. Baltimore street; occupation, book-keeper.
2 Q. Do you know the parties to this suit?
A. I know Mr. James A. Gary and Mr. Arnold S. Hyde, executors of Mr. Pratt; I do not think I know the others.

170 Mr. CROSS:

3 Q. Mr. Si-ms, were you in the employ of Mr. Enoch Pratt & Brother?
A. Yes, sir.
4 Q. Since when have you been in their employ?
A. Since 1873.
5 Q. You are still in their employ?
A. Yes, sir.
6 Q. Did you know the late Enoch Pratt?
A. Yes, sir.
7 Q. Did you know anything of the intercourse of Mr. Enoch Pratt with Mr. Isaac Pratt?
A. Mr. Isaac Pratt used to visit here sometimes.
8 Q. Did you ever meet Mr. Isaac Pratt?
A. Yes, sir.
9 Q. Under what circumstances did you meet him?
A. He came into the office on S. Charles street and Mr. Pratt introduced him to the person-el of the office.
10 Q. How did he introduce him?
A. As "My brother, Mr. Isaac Pratt, from Boston."
11 Q. Were you among those to whom he introduced him in that way?
A. Yes, sir.
12 Q. Do you know anything of his relations with Mrs. Tobey, of Wareham, Mass.?
A. Yes, sir.
13 Q. State what you know.
A. I have never seen the lady, but Mr. Pratt had been in the habit of shipping flour and canned goods to her through the medium of sailing vessels which were loaded with coal; he would come to me and ask me to make out the barge receipts for his sister, Mrs. Tobey, in Wareham.
14 Q. How did he speak of her?
A. As his sister; I have heard him speak to the captain, that Mrs. Tobey was his sister, and he wanted these goods shipped; he generally got them freight free, because he paid the freight on the coal, you know.

15 Q. What was the name to which he would address these shipments?

A. Generally to Mrs. Tobey; Susannah K. Tobey.

171 Cross-examination.

Mr. WHITE:

1 X Q. How long were you with Mr. Pratt?

A. Since 1873, sir.

2 X Q. Do you know of his sending, in addition to this flour that you speak of, and other things; do you know of his sending things to Mrs. Finney, or his nephew, any bonds or securities at any time during the last few years while you had been with him?

Mr. CROSS: Objected to.

A. Yes, sir.

3 X Q. Can you tell about how much was sent to each of them?

A. I cannot tell you; no, sir.

4 X Q. You have no knowledge whatever?

A. No, sir; I cannot tell you now.

5 X Q. Was it entered on his books in any way?

A. Yes, sir.

Mr. WHITE: All right; that is all.

Redirect examination.

Mr. CROSS:

1 R. D. Q. I want to put in two letters here, Governor, but I cannot file the book; I want to ask you if you have any letters to Mr. Isaac Pratt, or copies of any letters in that book, directed to Mr. Isaac Pratt?

A. Yes, sir.

2 R. D. Q. What is the book that you have?

A. This is the letter book here; that is only one of a great many of them.

3 R. D. Q. Just about that book; what is that book?

A. That is a copying book, a letter copying book.

4 R. D. Q. Of the office of Enoch Pratt?

A. Of the business letters; yes, sir.

5 R. D. Q. Well, then, go on now with the letters.

A. Well, I have two letters here, copies of letters, one of them addressed to "Brother Isaac Pratt," dated June 16, 1896; "Brother Isaac Pratt, Jr.: I have yours of the 14th inst. I return the note to have it made payable at the Atlantic or some other bank in Boston as we cannot collect at Bridgewater, having no bank there. When the transfer comes it will be necessary for me to send it down and have it exchanged by the company to properly bind it. Yours truly. Enoch Pratt."

172 6 R. D. Q. That is one; now the next.

A. This is addressed to Brother Isaac, June 17th, '86 or '76, I cannot tell which; the book only takes the impression of the 6, and the same way in the other case, it is '86.

"JUNE 17TH, 1886.

"BROTHER ISAAC: It looks to me the transfer must be recorded; if you intend to hold the property against all comers, and the transfer is not good, I think you sh-uld hold a meeting of directors and pass a resolution authorizing the transfer for same as directors in your bank do, and appoint some one as the attorney; then have it certified before the commissioner of the State of — (I cannot make out the name of the State)—residing in Massachusetts. I enclose the paper which you better have completed. I return the paper which you better have completed and return it to me or not, if you are satisfied with it; if it is your purpose to secure the loan I should say do it legally, and sign the note for the addition.

"Yours truly, ENOCH PRATT."

7 R. D. Q. In whose handwriting is this?

A. Mr. Pratt's handwriting.

8 R. D. Q. And the signature?

A. His own signature.

General question by the EXAMINER: Do you know or can you state any other matter or thing that may be of benefit or advantage to the parties to this suit or either of them; or that may be material to the subject of this your examination or the matters in question between the parties; if yea, state the same fully and at large in your answer.

A. No, sir.

(Signature waived by agreement.)

Mr. CROSS: I now want to file a certified copy of the will of Isaac Pratt, marked "Complainants' Exhibit I. P. Will."

HORACE P. TOBEY, recalled.

Direct examination.

Mr. CROSS:

1 Q. Did you know Mr. Isaac Lowell Pratt?

A. Yes, sir; I did know him when he was living.

2 Q. Was he related to you?

A. He was my cousin, the son of Isaac Pratt, Jr.

173 3 Q. When did he die, Mr. Tobey?

A. Well, he died within 3 or 4 years; that is my memory of his death.

4 Q. Do you know Mr. Lowell Tyler Pratt?

A. Yes, sir; he is a son of Isaac Lowell Pratt.

5 Q. Do you visit at the house of Isaac Lowell Pratt?

A. I do, frequently.

6 Q. Do you know Emily L. Pratt?

A. Yes, sir.

7 Q. How was she treated by Isaac Lowell Pratt?

A. Emily L. Pratt was the wife of Isaac Lowell Pratt.

8 Q. Well, what I want to know is as to his acknowledging her as his wife.

A. Certainly; they lived together all their lives, so long as he lived.

9 Q. Did you ever hear him speak of her as his wife?

A. Yes, sir; all the time, all their lives.

10 Q. Now, what relation was Lowell Tyler Pratt to Isaac Lowell Pratt?

A. He was the son of Isaac Lowell Pratt.

11 Q. Did he have any other sons?

A. Yes, sir; he had a son, John, who died, I think; I think there were no others but the two.

12 Q. Did you ever hear Isaac Lowell Pratt speak of Lowell Tyler Pratt?

A. Yes, sir.

13 Q. In what way?

A. Well, as his son, and speaking about how he was getting on in business and many ways; he has frequently spoken of him; he had two daughters.

14 Q. What became of them?

A. He had two daughters, Emily and Stella; one of them is married, and the other is still living with her mother.

15 Q. Do you know of his speaking of them in any way?

A. Yes, sir; they were his daughters, and they were in his family with him, and recognized as such and spoken of as such.

16 Q. Did you ever hear him speak of them as his children?

A. Yes, sir.

Mr. WHYTE: No cross-examination.

174 General question by the EXAMINER: Do you know or can you state any other matter or thing that may be of benefit or advantage to the parties to this suit or either of them; or that may be material to the subject of this your examination or the matters in question between the parties; if yea, state the same fully and at large in your answer?

A. No, sir.

(The signing of his deposition by this witness is waived by agreement of the solicitors for the respective parties.)

RICHARD DALLAM, witness called and sworn on behalf of the plaintiffs, testified as follows:

Direct examination.

By the EXAMINER:

1 Q. State your name, residence and occupation.

A. Richard Dallam; secretary of state; Annapolis, Md.

Mr. CROSS:

2 Q. Mr. Dallam, as secretary of state, are you custodian of the papers in the executive archives?

A. Yes, sir.

3 Q. Have you the reports of the Trustees of the Sheppard Asylum

for the years 1893, 1894, 1895, 1896 and 1897, respectively, in your possession?

A. I have; yes, sir.

4 Q. Have you them with you; the originals?

A. I have the originals.

5 Q. Have you certified copies of them?

A. I have certified copies of them; yes, sir.

6 Q. Please produce and file with the examiner the certified copies now.

A. These are they.

NOTE.—The papers referred to are herewith filed by the examiner, marked respectively "Plaintiffs' Exhibits Examiner R. G., Nos. 1, 2, 3, 4 and 5."

7 Q. Mr. Dallam, have you compared these copies yourself, that you file, with the originals?

A. I have personally compared them; yes, sir.

8 Q. And they are correct?

A. They are correct copies of the originals.

175 Cross-examination.

Mr. WHYTE:

1 X Q. These are the reports, I presume, made under the requirements of the act of 1853, under which the corporation was created?

A. They are; yes, sir.

General question by the EXAMINER: Do you know or can you state any other matter or thing that may be of benefit or advantage to the parties to this suit or either of them; or that may be material to the subject of this your examination or the matters in question between the parties; if yea, state the same fully and at large in your answer.

A. No, sir; I do not.

(The signing of his deposition by this witness is waived by agreement of the solicitors for the respective parties.)

GEORGE A. POPE, recalled for the complainants, testifies as follows:

Direct examination resumed.

Mr. CROSS:

1 Q. Mr. Pope, will you kindly look at the papers which I now hand you purporting to be reports of the Sheppard asylum for the years 1893, 1894, 1895, 1896 and 1897, and tell the examiner if these are reports filed by you as president of the Trustees of the Sheppard Asylum?

A. These are the originals.

2 Q. The signature appended to these is your signature?

A. Yes, sir.

3 Q. These reports are true statements of the facts that they purport to state?

A. Absolutely.

4 Q. Now, you said that you desired to make some correction or alteration of your testimony?

A. I wish to correct my testimony on page 12 of the record, where, in answer to the 39th question, I stated that we had a deficit charged in our books of $36,000; accurately that should be $33,685.14, and then I would like to put this statement in as an explanation of that.

NOTE.—The statement referred to is herewith filed, marked "Defendants' Exhibit G. A. P., No. 1."

5 Q. Now, Mr. Pope, this paper which you file purports to give the deficit from year to year in the asylum account, or the
176 deficit on account of the asylum; what is the meaning of that deficit; the failure to do what?

A. The failure of the receipts from the patients to pay their expenses.

6 Q. Now, I have not the account for the year ending 1892, but I have for the year ending 1893, and in it I find that the receipts of the asylum from patients were $28,798, and from the Trustees of the Sheppard Asylum a sum of $6,000, making $34,000 and odd dollars, and that the amount charged to the asylum was $34,000 and odd dollars; how then does there come a deficit that year of $7,487?

A. I explained that these papers which you have in your hand, the reports sent to the governor, are transcripts of our cash receipts and expenditures, the actual cash received, and the actual cash expended; the cost of the asylum is made up of other items in cash; for instance, everything that the farm furnishes to the asylum in the way of provisions and such things as that which are not a cash expenditure, are charged to the asylum account, and therefore, these accounts sent to the governor, as I said to you the day before yesterday, are not really the business statement of the whole transactions of the two concerns, the asylum and the trustees; they are merely transcripts of the cash received and the cash paid out.

7 Q. Now—you mean to tell me then, that there ought to be, to make that then a real account of the working of the asylum financially, that there ought to be charges against it that are not on the account furnished to the governor?

A. Not on these cash receipts and disbursements furnished to the State; now, mind, that is not asylum account, but on the trustees' account of the expenditures for the farm account; you will find in there that as part of the cash expenditures.

8 Q. Yes, sir; I find them there; I find that the receipts for the farm are credited, and the expenses out of it debited.

A. Yes, sir; a comparatively small amount is credited to the farm in that year, isn't it?

9 Q. Yes, sir; I am referring to the account.

A. Until the last year, all of our farm expenses were not charged

to the asylum; until this last year, the farm expenses were charged to the farm.

10 Q. The farm expenses were charged to the farm?

A. Yes, sir; to the farm itself; we kept separate accounts on our books; for instance, a building and farm, and asylum; the old system of book keeping inaugurated in the beginning has been followed up right along until last year, when we concluded that our plant was finished, and that everything now, from that time on, with the exception of permanent improvements or additions to the plant, with that exception, were a part of the running expenses of the asylum; now, our farm account, if you will analyze those papers, will show what appears to be a large deficit every year, and it is for that reason that we did not charge that to the asylum operations.

177 11 Q. Well, do you sell produce and so on, outside of the farm?

A. Yes, sir; the surplus of hay, and such things as we have a surplus of.

12 Q. Now, Mr. Pope, is it not the expectation that this deficit should be paid back from the receipts of the asylum?

WITNESS: Receipts from patients?

Mr. CROSS: From patients; yes, sir.

A. Well, I cannot say it is the expectation; we hope in the course of time that the surplus of the receipts from the patients will pay it back.

Cross-examination.

Mr. WHYTE:

1 X Q. These reports that you make to the governor, are reports, are they not, made under the act of 1853, chapter 24?

A. Yes, sir.

2 X Q. They do not profess to be entire statements of all the transactions of the Sheppard asylum?

A. No, sir; they are transcripts of our cash transactions and of our statement of assets; that is what is required by the charter.

Redirect examination.

Mr. CROSS:

1 R. D. Q. They are meant to be true and accurate statements of the facts required by the charter, are they?

A. Yes, sir.

General question by the EXAMINER: Do you know or can you state any other matter or thing that may be of benefit or advantage to the parties to this suit or either of them; or that may be material to the subject of this your examination or the matters in question between the parties; if yea, state the same fully and at large in your answer?

A. I have nothing more to say.

(The signing of his deposition is waived by agreement of solicitors for respective parties.)

ARNOLD S. HYDE, witness called and sworn for the defendants, testified as follows:

178 Direct examination.

By the EXAMINER:

1 Q. State your name, residence and occupation.
A. Arnold S. Hyde; 1221 Maryland avenue; book-keeper.
2 Q. Do you know the parties to this suit?
A. Yes, sir.

Mr. HOMER:

3 Q. Are you one of the executors of the estate under the last will and testament of Enoch Pratt, deceased?
A. Yes, sir.
— Q. What relation did you bear or hold towards Mr. Enoch Pratt during his lifetime?
A. Book-keeper, sir.
5 Q. Were you confidential man?
A. Well, in a way; yes, sir.
6 Q. Do you or not know anything in reference to any transfers or donations of bonds or stocks or other property by Mr. Pratt during his lifetime to the six nephews and one niece mentioned in the last will and testament of Mr. Enoch Pratt, and of one other nephew, George Tobey; and if so, what?

Mr. CROSS: Objected to.

A. Yes, sir; I am fully acquainted with them.
7 Q. Will you please state on what dates these transfers were made, if you recollect?
A. I cannot give you the exact dates without reference to my books.
8 Q. You can refer to your books; (books produced); before answering that question, whose books are these?
A. These are Mr. Pratt's private books.
9 Q. Who kept those books?
A. I did, sir.
10 Q. Now, will you state to what extent bonds were transferred, or other securities?
A. September 18th, 1890, $125,000 to each of them; one million dollars in all to eight.
11 Q. Will you read the names of the persons to whom these transfers were made?
A. J. Lowell Pratt.
179 12 Q. What was the aggregate of I. Lowell Pratt?
A. $125,000; David I. Pratt the same; Edmund T. Pratt——
13 Q. How much to Edmund Pratt?
A. The same; they are all the same; Marland L. Pratt, Ellen J. O'Finney, that is the niece; Gerard C. Tobey, Horace P. Tobey and George O. Tobey.

14 Q. Do the books disclose what was given to Horace P. Tobey?
A. Yes, sir.
15 Q. Will you kindly state it to the examiner? I am asking you now for Horace P. Tobey.
WITNESS: It is all given in detail here; shall I read it off?
Mr. HOMER: Yes, sir.
A. 37 bonds of the West Virginia Central & Pittsburgh Railroad Company, $40,300 they were charged at; $13,000 North Pacific Railroad and land-grant bonds, $13,000; 53 shares of stock of the Fremont Nail Co., $5,300; 400 shares Delaware, Lackawanna & Western Railway Co., $28,000; 6 bonds of the Chicago, Burlington & Quincy Railroad Company, $7,760; 100 shares of the Chicago, Burlington & Quincy Railroad Co. stock, $10,000; 160 shares of the American Linen Co. stock, $16,000; 30 shares of the Metacomet Bank stock, $3,640; 1 bond of the Baltimore & Ohio Southwestern Railroad Company, $1,000; I think that will make $125,000.
16 Q. Can you state whether or not any other transfer or donation of securities was made by Mr. Enoch Pratt to those persons or to any of them, during his lifetime?
A. Yes, sir.
17 Q. If so, when and what amounts?
A. November 15, 1892, he gave each of them then $75,000.
17 Q. Will you name the parties?
A. The same parties exactly.

Mr. CROSS: Of course this is all objected to.

19 Q. Do you know how delivery of these securities was made?
A. I think the first was sent by express, the second by a private party.

Cross-examination.

Mr. CROSS:

1 X Q. Were you related to or connected with Mr. Pratt?
A. Yes, sir, a brother-in-law.
180 2 X Q. You knew him personally then?
A. Very well.
3 X Q. Did you ever meet Mr. Isaac Pratt, Jr., of Boston?
A. Yes, sir; very often.
4 X Q. How often?
A. Oh, I don't know; a great many times I suppose; I saw him last summer.
5 X Q. By whom were you introduced to him?
A. Mr. Pratt.
6 X Q. How did he introduce you to him; how did he describe him?
A. As his brother.
7 X Q. Did you ever meet Mrs. Susannah K. Tobey?
A. I met her once.
8 X Q. Who introduced you to her?
A. She was then visiting Mrs. Pratt.

9 X Q. Who introduced her to you?
WITNESS: Mrs. Tobey?
Mr. CROSS: Yes.
A. Mrs. Pratt.
10 X Q. Did you ever hear Mr. Pratt speak of Mrs. Tobey?
A. Yes, sir; often.
11 X Q. In what way did he speak of her?
A. As his sister.

Redirect examination.

Mr. WHYTE:

1 R. D. Q. When did you last see Mr. Isaac Pratt, Junior?
A. Last summer; last September.
2 R. D. Q. And haven't you seen him since then?
A. No, sir.

General question by the EXAMINER: Do you know or can you state any other matter or thing that may be of benefit or advantage to the parties to this suit or either of them; or that may be material to the subject of this your examination or the matters in question between the parties? If yea, state the same fully and at large in your answer.
A. No, sir.

181 (The signing of his deposition by this witness is waived by agreement of the solicitors for the respective parties)
Testimony closed.

There being no other witnesses named or produced before me, I closed these depositions, and now return them closed under my hand and seal, on this 13th day of June, 1898, at the city of Baltimore, and State of Maryland.

J. G. PITTS, *Examiner.* [SEAL.]

There are eleven exhibits with these depositions, to wit:
Plaintiffs' Exhibit Examiner R. D., Nos. 1, 2, 3, 4 and 5.
Plaintiffs' Exhibit Examiner G. A. P., Nos. 1 and 2.
Defendants' Exhibit Examiner G. A. P., Nos. 1, 3 and 4.
Defendants' Exhibit Examiner S. P., No. 1.

J. G. PITTS, *Examiner.*

PLAINTIFFS' EXHIBIT EXAMINER R. D. No. 1.

(Filed with depositions.)

Office of the Trustees of the Sheppard Asylum, room 32, Chamber of Commerce.

BALTIMORE, *Decm. 29th*, 1893.

To his excellency the governor of Maryland:

In compliance with an act of the General Assembly of Maryland, passed May 24th, 1853, entitled An act to incorporate the Trustees of the Sheppard Asylum, chapter 274

The trustees of the said asylum respectfully report that during the fiscal year ending November 30th, 1893, there *was* received and treated at the Sheppard asylum 73 patients, of which number 55 remained under treatment at the close of the year.

The second annual report of the medical superintendent, will in due time be ready for distribution, and will show from a medical standpoint a detail of the work performed at the institution. A copy of said report will be forwarded to the State authorities at Annapolis.

The medical service and general administration remain under the care of Dr. Edward N. Brush, assisted by Dr. L. Gibbons Smart, and a full corps of experienced attendants.

182 The large farm connected with the institution is continued to be chiefly used for the privacy and isolation of the patients in order to secure liberty for out-of-door exercise and amusements, and is operated as a source of supply for the table of the asylum, with dairy products, vegetable-, fruit, poultry, &c., as well as for general farming purposes in maintenance of the stock.

Considerable work has been done on the grounds, roads and walks during the year. The hauling incident to the work performed as well as for all needs of the asylum has been done by the teams maintained on the farm.

Herewith will be found accompany- statement showing receipts and expenditures during the year ending Nov. 3d, 1893, of both the trustees' and asylum accounts, and also of the financial condition of the corporation at the same date, to which reference is made as part of this report.

All of which is respectfully submitted.

GEO. A. POPE, *President.*

JOSEPH GRAPE, *Secretary.*

STATE OF MARYLAND, *City of Baltimore,* } *To wit:*

Be it remembered that on this 29th day of December, 1893, before me, the subscriber, a justice of the peace of said State, and for the city aforesaid, personally appeared Geo. A. Pope, president, Joseph Grape, secretary, and J. Olney Norris, one of the trustees of said asylum, and made affidavit in due form of law that the report herewith submitted is just and true to the best of their knowledge and belief.

JOHN L. HEBB, *J. P.*

Trustees of the Sheppard Asylum.

George A. Pope, president.
Gerard T. Hopkins.
E. Glenn Perine.
J. Olney Norris.
Dr. Charles H. Riley.
Chas. C. Homer.
George M. Lamb.

Office of the Trustees of the Sheppard Asylum.

BALTIMORE, MD., *Decmr. 1st*, 1893.

In compliance with an act of assembly incorporating the Trustees of the Sheppard Asylum, in 1853, chap. 274, sec. 5, the undersigned, president of said corporation makes the following accounts or statements of the receipts and expenditures for the fiscal year ending the 30th day of November, 1893, and of the assets and pecuniary condition of the corporation, to wit:

183 1892. Dec'r 1. Cash on hand, trustees' ac.			$371 56
Received during the year ending Nov. 30, 1893:			
From incomes on real and personal estate...	$33,773 28		
Less State and city taxes.....	$2,266 40		
Repairs to property	550 19		
Water rent.....	95 40		
Insurance and expenses.....	121 97		
	3,033 96		
		$30,739 32	
Ground rent of $42 sold at 5½ %	$763 63		
Bills payable, sundry notes paid and discounted	16,851 88		
			48,354 83
			$48,726 39
Expenditures during said period have been:			
Administration expenses, rent of office, salaries, and general office expenses		$2,254 25	
Sheppard asylum		6,000 00	
Expenses ac. miscellaneous expenses.....		441 02	
Furniture and household fixtures:			
Amount paid for furniture, bedding, carpets, &c.....		4,119 49	
Bills receivable, loan made on note.....	$400 00		
Less amount paid on account.....	100 00		
		300 00	
Bills payable, loan and discounts.....		1,800 00	
Interest ac. paid on loans.....		506 12	
Building ac., amount paid on ac. construction:			
Materials, mechanics, and laborers.		8,926 94	
Farm and garden ac.:			
Am't paid farmer, gardener, hands, extra labor, stock, and general farming expenses.	$9,017 99		
Less am't received from sale of produce, stock, &c	1,740 95		
		7,277 04	
			47,824 86
			$901 53

184 *Asylum Account.*

1892. Nov. 30. Cash on hand		$290 59
Receipts.		
Am't received on account of patients for board, medical attendance, and sundries	$28,719 24	
From Trustees of the Sheppard Asylum:		
Amount advanced on asylum account	6,000 00	
		34,719 24
		$35,009 83
Expenses during the year have been—		
Salaries and wages:		
Salaries and wages of supt., ass't physician, matrons, attendants, &c.	$11,414 31	
Heat, light, and water supply:		
Wages of engineers and firemen, coal, oil, and freight bills	9,502 26	
Miscellaneous expenses:		
Amount paid for subscription to magazines and periodicals, telephone rent, entertainments, &c.	770 26	
Groceries and provisions:		
Amount paid for groceries, provisions, and general table supplies	10,669 85	
Stationery and printing:		
Amount paid for printing books, forms, and sundry stationery	756 76	
Medical and surgical department:		
Sundry medicine supplies and fixtures	788 69	
Sundry patients:		
Amount paid out and ch'g'd to ac't of patients	332 90	
		34,235 03
Cash on hand Nov'r 30th, 1893		$774 80

The assets and pecuniary condition of the corporation at the close of the fiscal year, Nov'r 30th, 1893, are as follows:

Real estate in fee-simple, including sundry houses and lots of ground	$132,938 24	
Sundry ground rents	303,646 56	
Mortgage on real estate	7,500 00	
Sundry stocks and bonds	87,146 00	
Furniture and library of the late Moses Sheppard	657 63	
Furniture and household fixtures	19,857 43	
185 Farm and garden ac.:		
Which represents the value of stock, crops, implements, &c., on hand Nov. 30th, 1893, as per inventory of farmer	7,839 25	
Bills receivable	300 00	
Cash on hand and in bank	1,676 33	
	$561,561 44	
Less bills payable, temporary loans	14,000 00	
	$547,561 44	$547,561 44

Building ac.:

Which represents the cost of asylum buildings, farm buildings, cottage, gard-ner's house, farmer's house, general farm buildings, construction of roads, as far as progressed, and material on hand, amounts at the close of the fiscal year, Novm. 30th, 1893, to.....	$930,236 65	
To which add cost of land in Baltimore county, 377¼ acres, purchased as a site for the institution.....	70,896 89	
		1,001,133 54
		$1,548,694 98

All of which has been derived from the bequest of the late Moses Sheppard.

GEO. A. POPE,
President of the Trustees of the Sheppard Asylum.

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

Be it remembered that on this 29th day of December, A. D. 1893, before me, the subscriber, a justice of the peace of the State and city aforesaid, personally appeared George A. Pope, president of the Trustees of the Sheppard Asylum, and made solemn affirmation that the annexed accounts or statements are just and true, to the best of his knowledge and belief.

JOHN L. HEBB, *J. P.*

186 Office of the secretary of state, Annapolis, Maryland.

STATE OF MARYLAND,
OFFICE OF SECRETARY OF STATE.

I, Richard Dallam, secretary of state of the State of Maryland, do hereby certify that the aforegoing is a true copy of the report of the Trustees of the Sheppard Asylum for the year ending November 30th, 1893, now on file in the executive department.

The Great Seal of Maryland.

In testimony whereof I hereunto set my hand and affix my official seal this eighth day of June, in the year of our Lord eighteen hundred and ninety-eight.

RICHARD DALLAM,
Secretary of State.

PLAINTIFFS' EXHIBIT EXAMINER R. D. No. 2.

(Filed with depositions.)

Office of the Trustees of the Sheppard Asylum, room 32 Chamber of Commerce.

BALTIMORE, MD., *Nov. 30th*, 1894.

To his excellency the governor of Maryland:

In compliance with an act of the General Assembly of Maryland, passed May 24th, 1853, entitled "An act to incorporate 'the Trustees of the Sheppard Asylum,'" chap. 274:

The trustees of said asylum respectfully report that at the close of the fiscal year, November 30th, 1893, there were under treatment at the asylum 55 patients; admitted during the year, 62, making a total of 117 patients treated during the year, of which number 57 have been discharged, leaving 60 under care on Novm. 30th, 1894.

The medical service and administration remain under the care of Dr. Edw. N. Brush, assisted by Drs. L. Gibbons Smart and Edw. R. Bishop, and a full corps of experienced attendants.

The 3d annual report of the medical superintendent will be ready for distribution in a few days, and will give in detail the work of the institution.

The farm and grounds connected with the institution and which are chiefly used by the patients for out-of-door exercise and amusement, have been greatly improved since our last report. Several new buildings have been erected and improvements of a general character carried on to the extent of the means at the command of the trustees.

187 During the past year the west building has, on several occasions, been occupied to its full capacity, the trustees therefore realizing the necessity of providing further accommodations for patients, decided to push forward the work in progress on the east wing in order that it might be in condition for the reception of patients at an early day; the efforts put forth in this direction have met with success, and we are glad to report the east wing now ready to receive applicants for admission; with both buildings in operation, the accommodations of the asylum have been greatly enlarged.

In addition to the two main buildings, there is located on the grounds a large stone cottage, which has been fitted up and is now occupied by several patients who desire privacy and homelike surroundings in their care and treatment.

The trustees feel gratified at the results of the work of the institution as well as in the fact that the increased accommodations it now offers, better equips it for carrying out the objects of its founder, the late Moses Sheppard.

The members of the board of trustees continued as last reported, viz: George A. Pope, president, Gerard T. Hopkins, E. C. Perine, J. Olney Norris, Dr. Chas. H. Riley, C. C. Homer and George M. Lamb.

All of which is respectfully submitted.

GEO. A. POPE, *President.*

JOSEPH GRAPE, *Secretary.*

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

Be it remembered that on this 28th day of December, 1894, before me the subscriber, a justice of the peace for the said State, and for the city aforesaid, personally appeared George A. Pope, president, Joseph Grape, secretary and Geo. M. Lamb one of the trustees of said asylum, and made affidavit in due form of law, that the report

herewith submitted is just and true to the best of their knowledge and belief.

JOHN L. HEBB, *J. P.* [SEAL.]

Office of the Trustees of the Sheppard Asylum.

BALTIMORE, MD., *Dec. 1st*, 1894.

In compliance with an act of assembly, incorporating the Trustees of the Sheppard Asylum, in 1858, chap. 274, sec. 5, the undersigned, president of said corporation makes the following accounts or statements of the receipts and expenditures for the fiscal year ending November 30th, 1894, and the assets and pecuniary condition of the corporation, to wit:

188 *Trustees' Account.*

1893.			
Dec. 1. Cash on hand			$901 53
Rec'd during the year ending Nov. 30, 1894:			
Income from real and personal estate	$31,074 20		
Less State and city taxes, fire insurance, repairs to city property, water rent, &c.	3,512 70		
		$27,561 50	
Bills receivable, loan paid		200 00	
Sheppard asylum, from asylum account		5,000 00	
Bills payable, sundry notes paid and discounted		23,000 00	
			56,261 50
			$57,163 03

Expenditures.

Administration expenses:			
Rent of office, salaries and general office expenses		$2,564 49	
Building account:			
Amount paid on acc't of construction, materials, mechanics, laborers and insurance		37,297 39	
Amount p'd for furniture, bedding, carpets, &c		5,394 38	
Interest ac		1,105 16	
Interest on sundry loans, Sheppard Asylum farm, am't paid for land		310 80	
Farm and garden ac.:			
Amount paid to farmer, gardener and hands, and for extra labor, stock and general farming expenses, new roof on barn, &c.	$11,104 30		
Less amount received from sale of produce, stock, &c	1,629 77		
		9,474 53	
			56,146 75
Cash on hand Nov. 30th, 1894			$1,016 28

189 *Asylum Account.*

1893.			
Nov. 30. Cash on hand			$774 80
Received during the year ending Novm. 30th, 1894, on account of board, medical attendance, &c., of patients	$43,259 41		
			44,034 21

Expenditures.

Salaries and wages ac.:			
Salaries and wages of medical superintendent, ass't physicians, attendants, and general help		$13,143 16	
Heat, light, and water supply:			
Wages of engineers and firemen, coal pil., and machinists' supplies		7,249 50	
Groceries and provisions:			
Groceries, provisions, and general table supplies		12,185 47	
Medical and surgical department:			
Medicines, fixtures, and general supplies		725 23	
Household expenses:			
Household furnishings, renewed		887 87	
Stationery and printing:			
Annual reports, record books, sundry stationery, and printing		439 48	
Trustees of the Sheppard Asylum:			
Amount paid trustees' account		5,000 00	
Patients' accounts:			
Amount expended for and charged to patients' individual accounts		2,191 54	
Miscellaneous expenses:			
Amount paid for books, magazines, papers, telephone, postage, expressage, and for entertainments for patients		1,014 53	
			42,836 78
Cash on hand Novm. 30th, 1894			$1,197 43
Assets and pecuniary condition of the corporation at the close of the fiscal year, November 30th, 1894:			
Cash in bank and on hand	$2,213 71		
190 Real estate in fee-simple	132,938 24		
Sundry ground rents	303,646 56		
Mortgage on real estate	7,500 00		
Sundry stocks and bonds	87,146 00		
Furniture and library of the late Moses Sheppard	657 53		
Furniture and household fixtures	25,251 81		
Bills receivable	100 00		
	$559,453 95		
Farm and garden ac.:			
Estimated value of stock, crops, implements, &c., on hand Nov. 30th, 1894, per inventory	6,524 90		
		$565,978 85	
Deduct bills payable, temporary loans		37,500 00	
			$528,478 85
Building account:			
Which represents cost of gate, houses, farmers and gard-ners, houses, cottage, asylum buildings (as far as progressed), construction of roads and improvements to grounds, material on hand, &c.. at close of the year		$968,039 63	
To which add cost of land in Baltimore county, 377¼ acres, purchased as a site for the institution		71,207 69	
			1,039,247 32
			$1,567,726 17

All of which has been derived from the bequest of the late Moses Sheppard.

GEORGE A. POPE,
President of the Trustees of the Sheppard Asylum.

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

Be it remembered that on this 28th day of December, A. D. 1894, before me the subscriber, a justice of the peace of the State and
191 city aforesaid, personally appeared George A. Pope, president of the Trustees of the Sheppard Asylum, and made solemn affirmation that the annexed accounts or statements are just and true to the best of his knowledge and belief.

JOHN L. HEBB, *J. P.* [SEAL.]

STATE OF MARYLAND,
OFFICE OF SECRETARY OF STATE.

I, Richard Dallam, secretary of state of the State of Maryland, do hereby certify that the aforegoing is a true copy of the report of the Trustees of the Sheppard Asylum, for the year ending November 30th, 1894, now on file in the executive department.

Seal of Secretary of State.

In testimony whereof I hereunto set my hand and affix my official seal this 8th day of June, A. D. 1898.

RICHARD DALLAM,
Secretary of State.

PLAINTIFFS' EXHIBIT EXAMINER R. D. No. 3.

(Filed with depositions.)

BALTIMORE, *Nov. 30th,* 1895.

To his excellency the governor of Maryland:

In compliance with an act of the General Assembly of Maryland, passed May 24th, 1853, entitled An act to incorporate "the Trustees of the Sheppard Asylum," chap. 274:

The trustees of said asylum respectfully report, that during the pass year improvements to the buildings and grounds have been made to the extent of the means at the command of the trustees; additional furniture has been placed in the buildings, made necessary by the increased demands upon the institution for the reception of patients; this latter feature necessitated the removal of the male patients from the west to the east building, which had been put in condition during the previous year so as to be ready for use as occasion required.

There remained under treatment at the asylum at the close of the fiscal year, Nov. 30th, 1894, 60 patients, since which date 94 were admitted, making a total of 194 cases under care and treatment during the year just closed, of which number 77 were discharged,

removed or died, leaving 77 patients under treatment at the date of this report.

The annual report of the trustees and medical superintendent will shortly be ready for distribution, and will give in detail the work of the institution.

The asylum may now be said to be prepared, with the addition of furniture as the increase of patients demands, to receive patients to the extent of its capacity, namely, 150.

192 The result of the work accomplished at the institution has been fully up to the expectation of the trustees, and no effort will be spared to maintain a high standard of efficiency in the treatment of those who come within its care.

The farm and garden connected with the institution are operated chiefly as a source of supply for dairy products, vegetables, fruit, poultry, &c., for use at the tables of the asylum as well as for general farming purposes in maintenance of stock; the surrounding grounds which have been much improved of late form a valuable adjunct to the institution in securing privacy to the patients during out-of-door exercise and amusements.

The board of trustees remains as last reported, viz: Geo. A. Pope, president; Gerard T. Hopkins, E. G. Perine, J. Olney Norris, Dr. C. H. Riley, C. C. Homer and G. M. Lamb. Herewith will be found statements showing the receipts and expenditures during the fiscal year ending Nov. 30th, 1895, of both trustees' and asylum accounts, also of the financial condition of the corporation at the same date, to which reference is made as a part of this report.

All of which is respectfully submitted.

GEORGE A. POPE, *President.*

JOSEPH GRAPE, *Secretary.*

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

Be it remembered that on this thirtieth day of December, 1895, before me, the subscriber, a justice of the peace of the said State, and for the city aforesaid, personally appeared Geo. A. Pope, president, Joseph Grape, secretary, and George M. Lamb, one of the trustees of said asylum, and made affidavit in due form of law, that the report herewith submitted is just and true, to the best of their knowledge and belief.

JOHN L. HEBB, *J. P.* [SEAL.]

Office of the Trustees of the Sheppard Asylum.

BALTIMORE, MD., *Novm. 30th*, 1895.

In compliance with an act of assembly incorporating the Trustees of the Sheppard Asylum, in 1853, chapter 274, sec. 5, the undersigned, president of said corporation, makes the following accounts or statements of the receipts of the expenditures for the fiscal year ending Novm. 30th, 1895, and of the assets and pecuniary condition of the corporation, to wit:

193 *Trustees' Account.*

1894, Nov. 30, cash on hand			$1,016 28
Received during the year ending Nov. 30, 1895:			
Income from real and personal estate	$30,879 79		
Less State and city taxes, fire insurance, water rents, repairs to city property, &c.	3,240 28		
		$27,639 51	
Bills receivable, loans collected		100 00	
Bills payable, increase in loans		5,000 00	
			32,739 51
			$33,755 79

Expenditures.

Administration expenses:		
Salaries and general expenses of administering trust	$2,743 44	
Building account:		
Amount expended in construction, painting, and out-houses	10,599 47	
Furniture and household fixtures:		
Amount paid for furniture, &c.	4,285 25	
Interest ac.:		
Interest paid on sundry loans	1,840 56	
Farm and garden ac.:		
Amount paid for implements, labor and general farming expenses	$10,957 47	
Less amount received from sale of produce, stock, &c.	1,338 26	
	9,619 21	
Sheppard asylum:		
Amount advanced the asylum ac	2,253 00	
Roads and grounds:		
Amount expended in improving roads and grounds	2,122 20	
		33,463 13
Cash on hand Novm. 30th, 1895		$296 66

Asylum Account.

1894, Nov. 30, cash on hand	$1,197 43	
Received during the year on account of patients	41,105 86	
From Trustees of the Sheppard Asylum	2,300 00	
		44,603 29

194 Expenditures.

Ac. salaries and wages ac.:		
Salaries of medical staff, attendants, nurses and general help	$17,049 55	
Heat, light and water supply:		
Wages of electrician, engineers and fireman, bill for coal, machinists' supplies, &c.	8,157 21	
Groceries and provisions:		
Amount paid for groceries and provisions and general table supplies	13,330 34	

Medical and surgical department:		
Amount paid for medicines, instruments, &c	858 52	
Household expenses:		
Amount paid for repairing and renewing household articles	1,130 33	
Stationery and printing:		
Paid for annual reports, record books, sundry stationery and printing	567 73	
Patients' accounts:		
Amount paid for and charged to accounts of patients	1,510 82	
Miscellaneous expenses:		
Amount paid for books, magazines, papers, telephone service, postage, expressage, entertainment of patients.	1,675 43	
		44,280 33
Cash on hand November 30th, 1895		$322 96
Assets and pecuniary condition of the corporation at the close of the fiscal year, Novm. 30th, 1895, are as follows:		
Cash in bank and on hand		$615 62
Real estate in fee-simple		132,938 24
Sundry ground rents		303,646 56
Sundry stock and bonds		87,146 00
Mortgage and real estate		7,500 00
Furniture and library of the late Moses Sheppard		657 63
Furniture and household fixtures		29,537 06
		$562,041 11
Farm and garden ac.:		
Estimated value of stock, crops, implements, &c., on hand Nov. 30th, 1895, as per inventory		7,161 76
		$569,202 87
195 Deduct bills payable, temporary loans		42,500 00
		$526,702 87
Building ac.:		
Which represents cost of asylum buildings, cottage, barn, farmer's and gard-ner's houses, gate-houses, poultry-house and outbuildings, also material on hand at close of year	$978,882 23	
To which add—		
Cost of land in Baltimore county, 377¼ acres purchased as a site for the institution	71,207 69	
		1,050,089 92
		$1,567,792 79

All of which has been derived from the bequest of the late Moses Sheppard.

GEO. A. POPE,

President the Trustees of the Sheppard Asylum.

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

Be it remembered that on the 30th day of December, A. D. 1895, before me the subscriber, a justice of the peace of the State and city aforesaid, personally appeared George A. Pope, president of the Trustees of the Sheppard Asylum, and made solemn affirmation that the annexed accounts or statements are just and true to the best of his knowledge and belief.

JOHN L. HEBB, *J. P.* [SEAL.]

Office of the secretary of state, Annapolis, Maryland.

STATE OF MARYLAND,
OFFICE OF SECRETARY OF STATE.

I, Richard Dallam, secretary of state of the State of Mary-
196 land, do hereby certify, that the aforegoing is a true copy of the report of the Trustee- of the Sheppard Asylum, for the year ending November 30th, 1895, now on file in the executive department.

In testimony whereof, I hereunto set my (*my*)
(Secretary's Seal.) hand and affix my official seal, this eighth day of June, A. D. 1898.

RICHARD DALLAM,
Secretary of State.

Office Trustees of the Sheppard Asylum.

BALTIMORE, MD., *Nov. 30th*, 1896.

To his excellency the governor of Maryland:

In compliance with an act of the General Assembly of Maryland, passed May 24th, 1853, entitled An act to incorporate the Trustees of the Sheppard Asylum, chap. 274—

The trustees of said asylum, respectfully report:

That there remained under treatment at the asylum at the close of the last fiscal year 77 patients, since which date 87 have been admitted, making a total of 164 patients under care and treatment during the year, of which number 84 were discharged, removed or died, leaving 80 patients under treatment at the date of this report.

The annual report of the medical superintendent is now in course of preparation, and will give a detailed account of the work of the institution.

The trustees are gratified with the very satisfactory results of the work accomplished at the asylum in the treatment of those unfortunate ones who by reason of disease have been placed under its care.

The farm, garden and poultry yard connected with the institution are operated chiefly for the production of vegetables, fruit, milk, eggs, poultry, &c., for the use at the tables of the asylum.

The surrounding grounds which are continually receiving atten-

tion with view to improvement afford privacy to patients in their out-of-doors exercise and various amusements.

The board of trustees remains as last reported, namely, Geo. A. Pope, president; Gerard T. Hopkins, E. G. Perine, J. Olney Norris, Dr. Chas. E. Riley, C. C. Homer and Geo. M. Lamb.

Herewith will be found statements showing the receipts and expenditures during the fiscal year ending Novm. 30th, 1896, of both trustees' and asylum accounts, also the financial condition of the corporation at the same date, to which reference is made as a part of this report.

All of which is respectfully submitted.

GEO. A. POPE, *President.*

197 STATE OF MARYLAND, *Baltimore City,* } *To wit:*

Be it remembered that on this 31st day of December, 1896, before me, the subscriber, a justice of the peace of the said State, in and for the city aforesaid, personally appeared Geo. A. Pope, president; George Grape, secretary, and J. Olney Norris, one of the trustees of said asylum, and made affidavit in due form of law, that the report herewith submitted is just and true, to the best of their knowledge and belief.

JOHN L. HEBB, *J. P.*

Office of the Trustees of the Sheppard Asylum.

BALTIMORE, MD., *November 30th*, 1896.

In compliance with an act of assembly incorporating the Trustees of the Sheppard Asylum, in 1853, chap. 274, sec. 5, the undersigned president of said corporation, makes the following accounts or statements of the receipts and expenditures for the fiscal year ending Novm. 30th, 1896, and of the assets and pecuniary condition of the corporation, to wit:

Trustees' Account.

1895.			
Nov. 30. Cash on hand			$292 66
Received during the year:			
Income from real and personal estate	$30,349 16		
Less State and city taxes, fire insurance, water rents, repairs to city property, &c.	3,406 03		
		$26,943 13	
Bills payable, increases in loans		5,500 00	
Sheppard asylum, am't rec'd from asylum (net)		376 63	
			$32,819 76
Expenditures.			
Administration expenses:			
Salaries and general expenses of administering trust		$2,783 47	
Building account:			
Amount expended in construction, painting, general repairs, &c., on main buildings, outhouses, &c		10,147 59	
Furniture and household fixtures:			
Amount expended for furniture		3,207 39	

Interest:			
Interest paid on sundry loans		2,139 19	
198 Farm and garden account:			
Amount paid for implements, stock, labor and general farming expenses	$12,724 18		
Less, rec'd from sale of produce, stock, &c.	1,192 24		
		11,531 94	
Roads and grounds:			
Amount expended in construction of roads and improving grounds		2,573 44	
Litigation account:			
Attorney's fees		250 00	
Comptroller's department:			
Sundry bills		250 00	
			32,888 02
Cash on hand November 30th, 1896			$224 40

Asylum Account.

1895.			
Nov. 30. Cash on hand			$322 96
Received during the year on account of board, medical attendance, &c., to patients			50,980 72
			$51,213 68
Expenditures.			
Salary and wages acc't:			
Salaries of medical staff, attendants, nurses and general help		$19,125 82	
Heat, light and water supply:			
Wages of engineers, firemen and electrician, bills for coal, machinist and electrical supplies		10,087 26	
Groceries and provisions:			
Amount expended for groceries, provisions and general supplies for table		15.087 26	
Medical and surgical department:			
Amount expended for medicines, instruments, &c		953 16	
Furniture and household fixtures, renewal and repairs:			
Amount expended for renewing and repairing housekeeping articles		1,283 79	
Stationery and printing:			
Amount expended for annual reports, records, books, sundry stationery and printing		572 81	
199 Miscellaneous expenses:			
Amount paid for books, magazines, papers, telephone service, postage, expressage, and entertainment of patients		1,177 93	
Patients' accounts:			
Amount expended for and charged to patients' accounts.		1,288 93	
Trustees' account:			
Amount paid trustees' acc't (net)		376 63	
			50,817 77
Cash on hand November 30th, 1896			$395 91

Assets and pecuniary condition of the corporation at the close of the fiscal year ending November 30th, 1896, *and* are as follows:

Cash on hand	$620 31	
Real estate in fee-simple	132,938 24	
Sundry ground rents	303,646 56	
Sundry stocks and bonds	87,146 00	
Mortgage on real estate	7,500 00	
		$531,851 11
Farm and garden ac.:		
Estimated value of stock, crops, implements, &c., on hand Nov. 30th, 1896, as per inventory		7,846 84
		539,697 95
Deduct bills payable, temporary loans		48,000 00
		$491,697 95
Building ac.:		
Which represents cost of asylum buildings, cottage, barn, farmer's and gard-ner's houses, gate-houses, poultry-house, outbuildings, electric-light plant, and material on hand at close of year	$989,207 47	
To which add cost of land in Baltimore Co., 377¼ acres purchased as a site for the institution	71,207 69	
Cost of furniture and household fixtures	32,744 45	
Furniture and library of the late Moses Sheppard	657 63	
		1,093,817 24
		$1,588,515 19

All of which has been derived from the bequest of the late Moses Sheppard.

GEO. A. POPE,
President the Trustees of the Sheppard Asylum.

200 STATE OF MARYLAND, *Baltimore City,* } *To wit:*

Be it remembered that on this 31st day of December, A. D. 1896, before me, the subscriber, a justice of the peace of the State and city aforesaid, personally appeared George P. Pope, president of the Trustees of the Sheppard Asylum, and made solemn affirmation that the annexed accounts or statements are just and true, to the best of his knowledge and belief.

JOHN L. HEBB, *J. P.* [SEAL.]

STATE OF MARYLAND,
OFFICE OF SECRETARY OF STATE.

I, Richard Dallam, secretary of state of the State of Maryland, do hereby certify that the aforegoing is a true copy of the report of the Trustees of the Sheppard Asylum for the year ending November 30th, 1896, now on file in the executive department.

Seal of the Secretary of State.

In testimony whereof I hereunto set my hand and affix my official seal this eighth day of June, in the year of our Lord eighteen hundred and ninety-eight.

RICHARD DALLAM,
Secretary of State.

PLAINTIFFS' EXHIBIT EXAMINER R. D. No. 5.

(Filed with depositions.)

Office Trustees of the Sheppard Asylum.

BALTIMORE, MD., *Nov. 30th*, 1897.

To his excellency the governor of Maryland:

In compliance with an act of the General Assembly of Maryland, passed May 24th, 1853, entitled "An act to incorporate the 'Trustees of the Sheppard Asylum,'" chap. 274, the trustees of said asylum respectfully report:

That there remained under treatment at the asylum at the close of the last fiscal year 80 patients; since which time 87 have been admitted, making a total of 167 patients under care and treatment during the year, of which number 79 were discharged, removed or died, leaving 88 patients under treatment at the date of this report.

The annual report of the medical superintendent to the trustees, a printed copy of which accompanies this, gives in detail the history of the operations of the institution for the year.

201 The results therein shown are very gratifying to the trustees, vindicating the wise beneficence of the founder, and compensating them for gratuitous services in the cause. These benevolent results were limited in extent only by lack of larger means to broaden its work, and not by scarcity of cases it might have cared for.

The farm, garden and poultry yard connected with the institution are operated chiefly for the production of vegetables, fruit, milk, eggs, poultry, &c., for use at the tables of the asylum.

The surrounding grounds have been greatly improved during the year, and afford privacy to patients in their out-of-doors exercises and various amusements.

The board of trustees consists of George A. Pope, president; Gerard T. Hopkins, J. Olney Norris, Dr. Charles H. Riley, C. C. Homer and George M. Lamb.

Herewith will be found statements showing receipts and expenditures during the fiscal year ending Nov'm'r 30th, 1897, of both trustees and asylum accounts, also the financial condition of the corporation at the same date, to which reference is made as part of this report.

The indebtedness of $53,000 shown on the statement, was incurred during the six years the asylum has been open, first to hasten its completion and furnishing, rather than defer the reception of patients several years longer, and second, to meet the deficit in its receipts from patients, and is to be refunded from the future anticipated income from both sources.

All of which is respectfully submitted.

GEO. A. POPE, *President.*

JOSEPH GRAPE, *Secretary.*

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

Be it remembered that on this 31st day of December, 1897, before me the subscriber, a justice of the peace of the said State, in and for the city aforesaid, personally appeared George A. Pope, president; Joseph Grape, secretary, and J. Olney Norris, one of the trustees of said asylum, and made affidavit in due form of law that the report herewith submitted is just and true, to the best of their knowledge and belief.

[SEAL.] JOHN L. HEBB, *J. P.*

202 Office of the Trustees of the Sheppard Asylum.

BALTIMORE, MD., *Nov. 30th*, 1897.

In compliance with an act of assembly, incorporating the "Trustees of the Sheppard Asylum" in 1853, chap. 274, sec. 5, the undersigned president of said corporation makes the following accounts or statements of the cash receipts and expenditures for the fiscal year ending November 30th, 1897, and of the assets and pecuniary condition of the corporation, to wit:

Trustees' Account.

1896.			
Nov. 30. Cash on hand			$224 40
Received during the year:			
Income from real and personal estate	$31,018 40		
Less State and city taxes, fire insurance, water rents, repairs to city property, &c.	3,655 58		
		$27,362 72	
Bills payable:			
Increase in loans		5,000 00	
Mortgage S. S. Baltimore St., nr. Light		7,500 00	
			39,862 72
			$40,087 12

Expenditures.

Administration expenses:		
Salaries, office rent, and general expense of administering trust	$2,767 52	
Building ac.:		
Expended in construction and improvement of buildings	2,348 98	
Furniture and household fixtures:		
Furniture, bedding, &c	3,357 14	
Interest ac.:		
Interest on loans	2,400 00	
Legal expenses, attorneys' fees	100 00	
Repairs ac.:		
Material, labor, &c., in repairs to buildings	2,677 69	
Roads and grounds:		
Expended in construction of and improving roads and grounds	3,688 64	

Investment ac.:			
Am't of funds invested		9,800 00	
203 Sheppard asylum:			
Advanced asylum account		2,000 00	
House 1216 W. Cross St., am't paid for tax title		103 44	
Poultry house and yard:			
Wages, feed, insurance on buildings and general supplies		1,223 01	
Farm ac.:			
Stock, implements, taxes, labor and general farming expenses	$9,138 41		
Less amount received for cash sale of produce and stock	1,939 82		
		7,198 59	
Garden ac.:			
Stock, implements, taxes, labor and garden supplies	$2,037 26		
Less amount received for cash sales of vegetables	149 98		
		1,887 28	
			$39,552 29
Nov. 30th, 1897. Cash on hand			$534 83
Asylum account:			
1896.			
Nov. 30. Cash on hand			395 91
Received during the year on account board and medical attendance of patients		$52,062 33	
From trustees of the Sheppard asylum		2,000 00	
			54,062 33
			$54,458 24

Expenditures.

Salaries and wages ac.:		
For salaries of medical staff, nurses, attendants and general help	$21,627 95	
Heat, light, and water supply:		
Wages of engineer, electrician, fireman, coal, machinist and electrical supplies	9,358 43	
Groceries and provisions:		
Groceries, provisions and general supplies for table	16,692 27	
204 Medical and surgical department:		
Medicines, instruments and lab-ratory supplies	938 24	
Household supplies:		
Sundry supplies and housekeeping articles	685 85	
Stationery and printing:		
Annual report, record books, sundry stationery and printing	762 72	
Miscellaneous expenses:		
Subscription to books, magazines and papers, telephone service, postage, expressage, insurance on buildings and entertainments	2,018 28	

Patients' accounts:		
Amount expended for and charged to patients' accounts.	903 77	
Wear and tear:		
Sundry articles renewed and repaired.....	1,666 00	
Barber account:		
Expended for barber supplies.....	12 88	
		54,266 39
Nov. 30th, 1897. Cash on hand.....		$191 85

Assets and pecuniary condition of the corporation at the close of the fiscal year ending Nov'r 30th, 1897, are as follows:

Cash on hand.....	$726 68	
Real estate in fee-simple.....	132,938 24	
Sundry ground rents.....	303,646 56	
Stocks and bonds.....	96,946 00	
		534,257 48
Farm ac.:		
Estimated value of stocks, crops, implements, &c., on hand Nov. 30th, 1897, as p'r inventory.....	7,287 37	
Garden ac.:		
Estimated value of stock, products, implements, &c., on hand Nov. 30th, 1897, as per inventory.....	1,086 00	
		8,373 37
		$453,630 85
Deduct bills payable, temporary loan.....		53,000 00
		$490,630 85
205 Building ac.:		
Which represents cost of asylum buildings, cottage, barn, farmer's and gardener's houses, poultry-houses, gate-houses, electric-light plant, outbuilding and material on hand at close of year.....	$991,585 95	
Cost of furniture and household fixtures.....	36,101 59	
Paid for from income and above loans.....	$1,027,687 54	
Cost of 337¼ acres of land in Baltimore Co. purchased and used as a site for the institution.....	71,207 69	
Furniture and library of the late Moses Sheppard....	657 63	
		1,099,552 86
		$1,590,183 71

All of which has been derived from the bequest of the late Moses Sheppard

GEO. A. POPE,
President the Trustees of the Sheppard Asylum.

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

Be it remembered that on this 31st day of December, 1897, before me, the subscriber, a justice of the peace of the State and city aforesaid, personally appeared George A. Pope, president of the Trustees of the Sheppard Asylum, and made solemn affirmation that the an-

nexed accounts or statements are just and true, to the best of his knowledge and belief.

[SEAL.] JOHN L. HEBB, *J. P.*

STATE OF MARYLAND,
OFFICE OF THE SECRETARY OF STATE.

I, Richard Dallam, secretary of state of the State of Maryland, do hereby certify that the aforegoing is a true copy of the report of the Trustees of the Sheppard Asylum, for the year ending November 30th, 1897, now on file in the executive department.

Seal of Secretary of State. In testimony whereof, I hereunto set my hand and affix my official seal this eight day of June, A. D. 1898.

RICHARD DALLAM,
Secretary of State.

206 PLAINTIFFS' EXHIBIT EXAMINER G. A. P. No. 1.

(Filed with depositions.)

In all cases a bond must be signed of which the following is a copy:

Bond.

In consideration of —— —— being admitted as a patient into the Sheppard Asylum, established and maintained by "The Trustees of the Sheppard Asylum," we do jointly and severally promise to pay to the said trustees, or to their order, quarterly or in advance, — per week for board, and to provide or pay for all requisite clothing and other things deemed necessary or proper for the health or comfort of said patient; to pay for all glass or furniture broken or destroyed by said patient; to remove — when discharged, and if removed or discharged within four weeks, to pay board for four weeks.

Witness our hands the — day of ——, 189–.

—— ——. [L. S.]
—— ——. [L. S.]

It is desirable that one signer should be a property-holder in the State of Maryland, but the certificate of a bank cashier or some public officer or responsible citizen of the financial responsibility of the signers will be accepted in lieu of this. The trustees must be assured in all cases of the financial standing of the signers.

PLAINTIFFS' EXHIBIT EXAMINER G. A. P. No. 2.

(Filed with depositions.)

The Trustees of the Sheppard and Enoch Pratt Hospital, room 32, Chamber of Commerce building.

BALTIMORE, *May 31st*, 1898.

	13	patients, at	$ "free"	per week.
	3	" "	$3 00	"
	1	" "	4 00	"
	7	" "	5 00	"
	6	" "	6 00	"
	5	" "	7 00	"
	4	" "	8 00	"
	13	" "	10 00	"
	8	" "	12 00	"
	11	" "	12 50	"
	17	" "	15 00	"
	2	" "	18 00	"
	5	" "	25 00	"
207	1	patient, at	35 00	per week.
	1	" "	40 00	"
	1	" "	50 00	"
	98	patients		

DEFENDANTS' EXHIBIT EXAMINER G. A. P. No. 1.

(Filed with depositions.)

The Trustees of the Sheppard Asylum, room 32 Chamber of Commerce building.

BALTIMORE, —— —, 189-.

Asylum Ac.

	Deficit.	Surplus.
30 Nov., 1892	$11,181 89	
'93	7,487 49	
'94		$2,355 73
'95	6,338 85	
'96	3,480 56	
	$36,040 87	
	2,355 73	
	$33,685 14	

DEFENDANTS' EXHIBIT EXAMINER G. A. P. No. 3.

(Filed with depositions.)

Copy.

To the Truetees of the Sheppard Asylum:

My design is, an institution similar to one near Philadelphia, belonging to the Society of Quakers, known as "The Asylum," and, like that under the direction of that description of persons, principally:

By the term "Quaker" I mean to include the different parts or divisions of the society:

My desire is, all for use, nothing for ornament;—the farm-house style;—fireproof as far as practicable; a small and expensive institution:—I mean that each patient shall have an attendant, when it may appear useful:—an experimental establishment; first for the poor of the society, secondly for such of the society as are able to pay; and then for the poor indiscriminately; afterwards the trustees will use their discretion.

208 My leading purpose is, to found an institution, to carry forward and improve the ameliorated system of treatment of the insane, irrespective of expense:

It is my desire, that this institution should be kept separate and distinct from any one of a similar character, now being, or hereafter to be erected by the State, or in any other way.

I inherited nothing from my progenitors but life. I have had very little intercourse with the greater part of my relations, they are strangers. To some of them I have been liberal; by others I have lost heavily; amounting, together with my donations, to a larger sum than I ever expected to acquire.

No person has a claim on me, either for pecuniary favors that I have received, or from consanguinity;—I, therefore have the right to dispose of my estate, according to my judgment.

Should my will be subjected to a court and jury, they may assume the *power*, but they cannot possess the *right* to disturb its provisions.

Your knowledge will prevent you from falling into the error of looking at the capital, instead of the net income.

Eveline Scott, a colored woman, was brought up in the family. She is not robust—and my desire is that she should be taken care of.

I also recommend George Barton to your attention.

I desire Richard H. Townsend, to take possession of my house and its contents, until further arrangements are made.

I give my watch, guard and seals, to Samuel F. McGill of Monrovia.

I give my manuscripts and account books, after the accounts are settled, to Richard H. Townsend.

MOSES SHEPPARD.

Baltimore, 16th January, 1855.

PLAINTIFFS' EXHIBIT EXAMINER G. A. P. No. 4.

(Filed with depositions.)

In the Matter of the Estate of ENOCH PRATT, Deceased.

For a meeting of persons entitled to distributive share, legacy or residue in said estate to be held in the orphans' court of Baltimore city, on the 25th day of March, 1897, at 11 a. m., in pursuance of said order and notice, it is hereby certified this 7th day of June, 1898, that by the docket entries in said estate, it appears that
209 the Sheppard Asylum trustees, by Joseph Grape, secretary of the board and trustees, appears in person representing said asylum, March 25th, 1897.

In testimony whereof, I hereunto sign my name and af-
[SEAL.] fix the seal of my office, this 7th day of June, in the year 1898.

STEPHEN R. MASON,
Register of Wills for Baltimore City.

DEFENDANTS' EXHIBIT EXAMINER S. P. No. 1.

(Filed with depositions.)

Be it known that I, Isaac Pratt, of North Middleboro, in the county of Plymouth, and Commonwealth of Massachusetts, do make my last will and testament, viz:

Item 1st. I direct my just debts to be paid and my unsettled concerns adjusted as soon as may be after my decease.

Item 2. I give devise and bequeath to my beloved wife Naomi K. Pratt (if she survive me) for and during the term of her natural life the use and improvement of the dwelling-house now occupied by me and all the furniture and housekeeping articles therein, with all the outbuildings and appurtenances belonging thereto and the lot of land, being about one acre, connected therewith.

Item 3. I give, devise and bequeath to my sons Enoch Pratt and Isaac Pratt, Jr., and the survivor of them and the heirs and representatives of such survivor (if my said wife survive me) the sum of five thousand dollars, in trust nevertheless. To invest and reinvest the same as shall to them seem most expedient, and the income, rents and issues thereof pay over to may said wife Naomi K. Pratt as the same may accrue, for and during the term of her natural life, taking her sole receipt therefore, and at her decease to distribute the same as is hereinafter provided.

Item 4. The remainder of my estate, real personal and mixed, including if my executors shall deem it expedient, the reversionary interest in the estate and property mentioned in item 2 at the decease of my said wife, in case my said wife survive me; and if she shall have deceased prior to my decease, the whole of my said estate real and personal and mixed, I direct to be sold or collected and converted into money as soon as may be without unnecessary loss.

Item 5. The whole of said remainder of my said estate, including the value of said property mentioned in item 2, subject to the life use and estate of my said wife, in case the same shall be sold, or in case my said wife shall have deceased, then the whole of my said estate, I direct to be divided into as many equal parts or portions as shall be equal to the number of my children living at my decease, and my children who shall have deceased leaving issue living at my decease. That is for each child living and for each child who shall have deceased leaving issue living at my decease one part or portion.

Item 6. One of said parts or portions mentioned in item 5, I give devise and bequeath to each of my sons Enoch Pratt Isaac Pratt, Jr. and Nathan F. C. Pratt who shall survive me, and to the children and children of deceased children of any deceased son or daughter; the issue of each of such my deceased son or daughter taking one part or portion, children of deceased children taking the proportional part that would have fallen to their parent, if alive.

Item 7. One of said parts or portions mentioned in item 5, for each of my daughters, Jane G. Oakes wife of George L. Oakes, and Susannah K. Tobey, wife of Joshua B. Tobey that may survive me, two parts one for each if both survive me. I give devise and bequeath to my sons Enoch Pratt, and Isaac Pratt, Jr. and the survivor of them, and the heirs and representatives of such survivor, in trust nevertheless.—

1st. To invest and reinvest the same as shall, in the exercise of a sound judgment seem to them most expedient, and the income rents and issues thereof, deducting necessary expenses to pay over as the same accrues to each of my said daughters (of one part to each) or the survivor of them as may be, for and during the term of her natural life, taking her sole receipt therefore seperate from her husband, and in no way subject to his debts or control.

2d. Upon the decease of each or either of my said daughters, to pay over distribute and dispose of the one part or portion so held, or whatever may be held, in trust, for her use in such manner as she may have directed by any instrument in writing in the nature of a will signed by her, and attested to by two or more witnesses; and in the absence of any such instrument to pay over and distribute the same equally to and among her children; and the children of any deceased child, such last taking the portion that would have been their parents' if alive.

3d. In case no such instrument be made, and their be no such issue of daughter living at her decease, then to pay over and distribute the trust fund of such daughter equally to and among my then surviving sons and the children and children of any deceased child of any *my* deceased son (children taking the part that would have fallen to their parent alive) the issue of a deceased son taking one part; and to the trust fund of my other daughter if she be alive if not her children and the children of any deceased child to take the share that would have gone to such trust fund had said daughter survived; children of any deceased children taking the part that would have been their parents' if alive.

Item 8. On the death of my wife if she survives me I direct the house and property mentioned in item 2, or such part thereof, if any, that may not have been already previously sold subject
211 to the life use and control of my said wife, as provided in item 4, to be sold, and the proceeds thereof together with the five thousand mentioned in item 3, to be paid over and divided equally to and among my then surviving sons and the several trust funds of my then surviving daughters, and the children and children of any deceased child of any *my* deceased son or daughter, issue of any son or daughter taking one share and children of any deceased child taking the portion that would have fallen to their parent if alive.

Item 9. I appoint my sons Enoch Pratt and Isaac Pratt, Jr., executors of this my last will and testament.

In testimony whereof, I have hereto set my hand and seal this twenty-fifth day of December, in the year eighteen hundred and forty-eight.

ISAAC PRATT. [SEAL.]

Signed, sealed, published and declared by the said Isaac Pratt, as and for his last will and testament, in our presence, who in his presence and in presence of each other, at his request, have hereto set our names as witnesses.

[SEAL.]

ZEBULON K. PRATT.
THOMAS J. PRATT.
LYSANDER HATHAWAY.
LEVI HATHAWAY.

Whereas, by my last will and testament dated the twenty-fifth day of December, eighteen hundred and forty-eight, item seventh, I gave and devised certain property to my sons Enoch Pratt, and Isaac Pratt, Jr., in trust for the benefit of my daughters, Jane G. Oakes and Susannah K. Tobey—

I do hereby by the present writing, which I declare to be a codicil to my said will order that the said trusteeship mentioned in said item seventh be dispensed with, and that the said parts or portions be paid to my said daughters Jane G. Oakes and Susannah K. Tobey without the intervention of a trustee, but to their separate use, free from the interference or control of their respective husbands, and in now way subject to their debts.

And I hereby ratify and confirm all other provisions mentioned in said item 7th except dispensing with trustees as above provided, as well as my aforesaid will.

In testimony whereof, I have hereto set my hand and seal, this twenty-fifth day of September, in the year eighteen hundred and fifty-four.

ISAAC PRATT. [SEAL].

Signed, sealed, published and declared by the said Isaac Pratt as and for a codicil to his last will and testament in our pres-
212 ence, who in his presence, and in presence of each other at

his request, have hereunto set our names as witnesses, September 25th, eighteen hundred and fifty four.

Z. K. PRATT.
B. F. PRATT.
T. J. PRATT.
J. K. PRATT.

[SEAL.]

A true copy of will and codicil.

Attest: J. C. SULLIVAN, *Register.*

To the honorable the judge of the probate court in and for the county of Plymouth:

Respectfully represents Enoch Pratt, of Baltimore, and Isaac Pratt, Jr., of Boston, in the county of Suffolk, that Isaac Pratt who last dwelt in Middleboro, in said county of Plymouth, died on the third day of December, in the year of our Lord one thousand eight hundred and sixty-four, possessed of goods and estate remaining to be administered; leaving a widow, whose name is Naomi K. Pratt, and as his only heirs-at-law and next of kin, the persons whose names, residences and relationship to the deceased, are as follows, viz:

Jane G. Oakes of Middleboro; Enoch Pratt of Baltimore; Susannah K. Tobey of Wareham; Isaac Pratt, Jr., of Boston; Nathan F. C. Pratt of Middleboro, all children of dec'd; that said deceased left a will and codicil herewith presented, wherein your petitioners are named executors. Wherefore your petitioners pray that said will and codicil may be proved and allowed, and letters testamentary issued to them.

Dated this seventh day of December, A. D. 1864.

ISAAC PRATT, JR.
ENOCH PRATT.

The undersigned being all the heirs-at-law and next of kin, and the only parties interested in the aforegoing petition, request that the prayer thereof be granted without further notice.

NAOMI K. PRATT.
J. B. TOBEY.
JANE G. OAKES.
SUSANNA K. TOBEY.
N. F. C. PRATT.

213 COMMONWEALTH OF MASSACHUSETTS, } ss:
Plymouth, }

At a probate court holden at Plymouth, in and for said county of Plymouth, on the second Monday of December, in the year of our Lord one thousand eight hundred and sixty-four; on the petition of Enoch Pratt of Baltimore, in the State of Maryland, and Isaac Pratt of Boston, in the county of Suffolk; praying that the instruments therewith presented purporting to be the last will and testament and codicil of Isaac Pratt, late of Middleboro, in said county of Plymouth, deceased, may be proven and allowed, and

letters testamentary issued to them, the executors therein named; and the heirs-at-law, next of kin and all other persons interested, having joined in said petition, and no party objecting thereto, and it appearing that said instruments are the last will and testament and codicil of said deceased and were legally executed, and that said testator was at the time of making the same of full age and sound mind; and that said petitioners are competent persons to be appointed to said trust.

It is therefore decreed, that said instruments be approved and allowed as the last will and testament of said deceased, and letters testamentary be issued to said petitioners, they first giving bond with sufficient sureties for the due performance of said trust.

WM. H. WOOD,
Judge of Probate.

A true copy.
Attest: J. C. SULLIVAN, *Register.*

COMMONWEALTH OF MASSACHUSETTS, *Plymouth,* } *ss:*

Probate Court.

In the Matter of the Will and Estate of ISAAC PRATT, Late of Middleboro, in said County, Deceased.

The subscriber who has made application for the probate of the will of said deceased, on oath, declares that to the best of his knowledge and belief, the estate and effects of said deceased for or in respect of which he has applied for probate of will, do not exceed the value of forty thousand dollars.

Plymouth, *ss.*, Dec. 12, 1864.

ISAAC PRATT, JR.

Subscribed and sworn to before me.

WM. H. WOOD,
Justice of the Peace.

214 Annexed to the aforegoing is a certified copy of approved bond of Isaac Pratt, Jr., and Enoch Pratt, executors of Isaac Pratt, deceased; amount of bond twenty-five thousand dollars.

COMMONWEALTH OF MASSACHUSETTS, *Plymouth,* } *ss:*

Probate Court.

To Enoch Pratt, of Baltimore, State of Maryland, and
[SEAL.] Isaac Pratt, of Boston, in the county of Suffolk and Commonwealth aforesaid:

Trusting in your care and fidelity, I, William H. Wood, Esquire, judge of the probate court in and for said county of Plymouth, by virtue of the power and authority vested in me, do hereby appoint you to be executors of the last will and testament of Isaac Pratt

late of Middleboro, in said county of Plymouth, deceased, testate, which said will was proved and allowed by said court, on the second Monday of December, A. D. 1864, and now of record in this court.

And you are ordered to make and return into said probate court within three months from date hereof a true inventory of all the real estate and all the goods, chattels, rights and effects of said testator, which are by law to be administered and which shall have come to your possession or knowledge.

To administer according to law the will of the testator all his goods, chattels, rights and credits, and the proceeds of all his real estate that may be sold for the payment of his debts or legacies which come to your possession, or that or any other person for you.

To render, upon oath, a just and true account of your administration within one year from the date hereof, and at any other times when required by said court.

And also, within three months, to cause notice of your appointment to be published three successive weeks in the Middleboro "Gazette," a newspaper printed at Middleboro and within one year return your affidavit of having given such notice with a copy thereof to the probate office.

In witness whereof, I have hereunto set my hand and caused the seal of said court to be affixed, at Plymouth, this twelfth [——.] day of December, in the year of our Lord one thousand eight hundred and sixty-four.

WM. H. WOOD,
Judge of Probate Court.

Countersigned:
D. E. DAMON, *Register.*

A true copy.
Attest: JOHN C. SULLIVAN, *Register.*

215 COMMONWEALTH OF MASSACHUSETTS, *Plymouth*, } ss:

REGISTRY OF PROBATE.

I, John C. Sullivan, register of the probate court in and for the county of Plymouth, having by law the custody of the seal and all the records, books, documents and papers of or appertaining to said court, hereby certify the papers hereto annexed to be true copies of papers appertaining to said court and on file or record in the office of said court, to wit, the last will and testament of Isaac Pratt, late of North Middleboro, in said county, deceased, the petition to said court for the probate of said will, the decree of said court admitting said will to probate, the bond given to said court by the executors of said will, and the letters testamentary issued to said executors.

And I further certify that the proof of said will in said court was by oral testimony only, and that there are no proofs or substance of proofs on file or of record in said court.

[L. S.] In witness whereof I have hereunto set my hand and the seal of said court this 7th day of June, A. D. 1898.

JOHN C. SULLIVAN, *Register.*

COMMONWEALTH OF MASSACHUSETTS, *Plymouth,* } *ss:*

Probate Court.

I, Benjamin W. Harris, Esquire, judge of the probate court within and for the county of Plymouth, hereby certify that John C. Sullivan, whose signature is affixed to the annexed certificate and attestation is the register and proper certifying officer of said court, and has by law the custody of the seal and all the records, books, documents and papers of or appertaining to said court, and that said certificate and attestation are in due form and entitled to full faith and credit.

[——.] In witness whereof I have hereunto set my hand and seal this 7th day of June, A. D. 1898.

B. W. HARRIS,
Judge of Probate Court.

216 *Motion of Plaintiff to Strike Out Certain Testimony.*

(Filed 13th June, 1898.)

ISAAC PRATT, JR., and SUSANNA K. Tobey
vs.
JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, *et al.*
} In the Circuit Court No. 2 of Baltimore City.

The plaintiffs, by their counsel, move to strike out as being irrelevant to any issue in this case, the following parts of the testimony:

Cross-interrogatories number 19 to 57, inclusive, put by counsel for the defendant, The Sheppard and Enoch Pratt Hospital, to the witness, Horace P. Tobey, and the answers made thereto, and also direct interrogatories put by counsel for The Sheppard and Enoch Pratt Hospital to the witness, Arnold S. Hyde, and the answers thereto.

W. IRVINE CROSS,
Solicitor for Plaintiffs.

Plaintiffs' Exceptions to Certain Testimony.

(Filed 15th June, 1898.)

ISAAC PRATT and SUSANNA K. TOBEY
vs.
JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, *et al.*
In the Circuit Court No. 2 of Baltimore City.

The plaintiffs except to the admissibility as evidence of the following questions and the answers thereto:
Cross-interrogatories No. 1 to 57, inclusive, put by counsel for defendants The Trustees of the Sheppard and Enoch Pratt Hospital to witness, Horace P. Tobey, and direct interrogatories No. 6 to 19, inclusive.

W. IRVINE CROSS,
Solicitor for Plaintiffs.

217 *Order of Consolidation.*

THE TRUSTEES OF THE SHEPPARD AND and Enoch Pratt Hospital
vs.
JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, Deceased.
Docket 68 A, 1898.

JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, Deceased,
vs.
THE TRUSTEES OF THE SHEPPARD AND Enoch Pratt Hospital *et al.*
Docket 76 A, 1898. In the Circuit Court No. 2 of Baltimore City.

THE TRUSTEES OF THE SHEPPARD AND Enoch Pratt Hospital
vs.
JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, Deceased.
Docket A 80, 1898.

ISAAC PRATT and SUSANNA K. TOBEY
vs.
JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, Deceased, *et al.*
Docket A 97, 1898.

It is on this, the twenty-fifth day of July, in the year eighteen hundred and ninety-eight, by the circuit court number two, of

Baltimore city, and by the authority thereof ordered, that
218 the case of The Trustees of the Sheppard and Enoch Pratt Hospital *vs.* James A. Gary *et al.*, executors; the case of James A. Gary *et al.*, executors, *vs.* The Trustees of the Sheppard and Enoch Pratt Hospital *et al.*; the case of The Trustees of the Sheppard and Enoch Pratt Hospital *vs.* James A. Gary *et al.*, executors (being the second case instituted in this court having that titling), and the case of Isaac Pratt, Junior, *et al. vs.* James A. Gary *et al.*, executors, *et al.*, be and the same are hereby consolidated, the one with the other, and all of the said cases shall be proceeded in as one case.

GEORGE M. SHARP.

Opinion.

(Filed 3d August, 1898.)

THE TRUSTEES OF THE SHEPPARD AND Enoch Pratt Hospital *vs.* JAMES A. GARY and ARNOLD S. HYDE, Executors of Enoch Pratt.	In the Circuit Court No. 2 of Baltimore City. Docket 1898 A, folio 68.
JAMES A. GARY, ARNOLD S. HYDE, Executors of Enoch Pratt, &c., *vs.* THE TRUSTEES OF THE SHEPPARD AND Enoch Pratt Hospital.	Docket 1898 A, folio 76.
THE TRUSTEES OF THE SHEPPARD AND Enoch Pratt Hospital, &c., *vs.* JAMES A. GARY, ARNOLD S. HYDE, Executors of Enoch Pratt, &c.	Docket 1898 A, folio 80.
219 ISAAC PRATT ET AL. *vs.* JAMES A. GARY and ARNOLD S. HYDE, Executors of Enoch Pratt, &c.	Docket 1898 A, Folio 97.

Four cases were argued together. The main question is the same in all of them and arises out of the will of the late Enoch Pratt. After making various bequests, Mr. Pratt disposes of the residue of his estate in the twelfth clause of his will, which is as follows:

"*Twelfth.* Having in my lifetime liberally provided for my niece and nephew hereunder named, I do hereby give, devise and bequeath all the rest and residue and remainder of my estate of every kind and description, whether real, personal or mixed, and wheresoever the same may be situate, of which I may die possessed, or be in any way entitled to at the time of my death, after the payment of all debts justly due by me and after satisfying all the devises and bequests hereinbefore set forth to the 'Trustees of the Sheppard

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Asylum' a corporation already incorporated by the General Assembly of the State of Maryland by said name, style and title, and its successors forever; it being my intention and meaning to make said corporation, the 'Trustees of the Sheppard Asylum' the residuary legatee and devisee of and under this my last will and testament. And I direct my executors to set over, transfer and convey by proper deeds, assignments and transfers the said residue of my estate to the said corporation upon and subject however to the following condition and bargain, namely: That the said trustees shall adopt as the name and style of said corporation, the title of the 'Trustees of the Sheppard and Enoch Pratt Hospital' and shall obtain at the first session of the General Assembly of Maryland after my death an amendment to their charter authorizing the said change of title and adopting the said name of the 'Trustees of the Sheppard and Enoch Pratt Hospital' as the future title of said corporation.

While I do not wish to alter the operations and management, or the working of the said asylum, as now existing and being carried on, it is my wish and will that the income, from my said residuary estate, shall be used to complete the present buildings and grounds and for the erection of such other buildings, or building, as will accommodate not less than two hundred additional inmates, and after that the income from my aforegoing donation shall be devoted mainly to the care of the indigent insane in the most advisable manner, at *very low charges*, or absolutely *free* as the trustees of said corporation, in the exercise of their best judgment as to the rate to be charged may deem best and wisest to promote the object of this donation.

220 Provided, however, and it is expressly my will that in case the said Trustees of the Sheppard Asylum fail to obtain from the General Assembly of Maryland, at its first session after my death, the amendment to the charter of said institution hereinbefore stipulated, and provided for, and fail to adopt the name for said corporation of the 'Trustees of the Sheppard and Enoch Pratt Hospital' then and in that case it is my will and I then give, devise and bequeath (in lieu of the aforegoing provision) the said residue of my estate to my niece Ellen I. O. Phinney and to my nephew Gerard C. Tobey, Horace Tobey, I. Lowell Pratt, David G. Pratt, Edmund T. Pratt and Mortland L. Pratt, to be in that case set apart for and equally divided among them and the issue *per stirpes*, of any of them who may be dead at the time of my decease, such issue to take the share to which its or their parent would if living have been entitled.

I direct my executors, until it shall have been decided as above provided, whether the said condition of my aforegoing devise and bequest of said residue will be performed, that is to say, whether the said corporation will obtain authority as aforesaid to change its title, and will in fact adopt the title above designated, to keep all buildings and improvements on my property insured and in good order and condition, and pay all charges and taxes thereon, and collect the rents and income on said residue of my estate, and to

invest the said net income in Baltimore City stock, the same to be added to and constitute a part of the said residuary estate."

At the last session of the legislature an act was passed changing the name of the institution referred to from "The Trustees of the Sheppard Asplum" to "The Trustees of the Sheppard and Enoch Pratt Hospital." (Laws of 1898, chap. 17.) This corporation now claims the residue of Mr. Pratt's estate, pursuant to the terms of his will, the "condition and bargain" on which the bequest was given, having been complied with.

But the right of this institution is contested by Ellen I. O. Phinney and the other alternative legatees mentioned in clause twelve of Mr. Pratt's will, and by his heirs and next of kin. The grounds of their contention are as follows:

I. That the act of the legislature of Maryland changing the name of the corporation is invalid: (1) Because it impairs the obligation of a contract and is in violation of art. 1, sec. 10 of the Constitution of the United States. (2) Because the act is contrary to art. 3, sec. 29 of the constitution of Maryland, which provides that every law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title. (3) That the Trustees of the Sheppard Asylum in consenting to the passage of the act and to the change of name exceeded their powers and that their action was illegal and void.

It is claimed that the act being void and a nullity, the "condition and bargain" has not been complied with, and the bequest passes under the terms of the will to the alternative legatees.

221 II. It is further contended that, whether the act be valid or not, the bequest to the asylum is void, because it attempts to create a trust in favor of "the indigent insane," which is void for uncertainty. It is claimed: (1) That the testator in paragraph 2, of clause 12 in providing that it was his "wish and will" that the income "shall be used" to complete the buildings, &c., and "shall be devoted" to the care of the indigent insane, created a trust. (2) That the bequest to the corporation being for a special purpose and not for the general purposes of the corporation, a trust was created.

III. That the bequest in favor of the indigent insane being to take effect after the completion of the present buildings and grounds and the completion of other buildings was a perpetuity.

It is claimed a trust and perpetuity having been created, either that the alternative legatees are entitled under the will or an intestacy has occurred as to the residuum of Mr. Pratt's estate, which consequently passed to his next of kin and heirs-at-law.

The first contention of the next of kin is that the act of 1898, chap. 17, changing the name of the Sheppard asylum, is void.

This claim is expressed in the brief as follows: "The charter to the Sheppard asylum was granted in 1853 and upon the faith of that charter Sheppard gave and devised to the corporation thus formed and bearing his name the bulk of his property amounting to about $1,000,000." "There was an implied contract between Sheppard, the corporation and the State that his bounty should be administered according to his intents and purposes, and for the ob-

jects stipulated in the charter. The name of the corporation was a part of its franchise and was inviolable." "Legislatures have no power to change the form of trust property contrary to the expressed intent of the donor, nor can they direct or sanction a scheme for the administration of the trust different from that prescribed by the donor." "In applying the above principles to our case there can be no doubt that when the legislature of Maryland granted the charter to the Sheppard asylum the scheme then formulated by the donor and founder contemplated the administration of this trust under the name then given it and under no other name. This was the expressed intent of the founder and it is certainly not within the power of the General Assembly to alter or change the course of administration in this respect."

This claim is founded on an erroneous view of the facts. The act of 1898 makes no changes in the trust; the objects for which the institution was incorporated are not changed. The single purpose of the act is to change the name.

Mr. Sheppard's gift to the institution was not on the express condition that his name should be associated with the charity. The language of his will admits of no such construction. The gift to the corporation is absolute and without any conditions. It
222 was a gift to the corporation to be used for the purposes of the institution, which are declared in section 2 of the charter to be as follows: "The object and design of said corporation is hereby declared to be the founding and maintainting of an asylum for the insane, the entire management of which shall be vested in said trustees."

There are no conditions of any sort. Mr. Sheppard's intention, as indidated by his will, is to give the residue of his estate to an asylum for the insane. Nothing more can be found in his will.

It is, of course, possible for a testator to annex to a gift the condition that his name shall be forever associated with it.

The charter of a corporation containing such a condition would present entirely different questions from those arising in this case. Here, there is no such express condition, and such a condition is not implied.

It follows from this that Mr. Sheppard and his representatives may be left out of consideration as parties to the contract created by the charter. The charter was a contract between the State and the corporation.

The act of 1853, chap. 274, incorporating the Sheppard asylum, provided in section 9, "That this act shall continue in force until repealed by the General Assembly and the General Assembly may at any time alter or amend this act." The right of the legislature to repeal, alter or amend the act being reserved in the act, this right was a condition of the contract.

Sprigg *vs.* Western Telegraph Co., 46 Md., 67.
American Coal Co. *vs.* Consolidated Coal Co., 46 Md., 15.
Shaeffer *vs.* Union Mining Co., 55 Md., 79.
Tomlinson *vs.* Jessup, 15 Wall., 457.

In view of the emphasis put on Mr. Sheppard's supposed intention, it may be remarked that he was an incorporator and one of the trustees mentioned in the act. He therefore was fully cognizant of and assented to the power to repeal or amend the charter.

But it is contended the power to amend does not extend to the name. As stated in the brief of the alternative legatees this claim is: "Notwithstanding the reservation of the power to amend it is clear that any amendment to be valid must be in line with the intents and wishes of the founder and any amendment antagonistic to his wishes and which in effect obliterates his connection with the charity is beyond the power of the legislature to make."

The act of 1898 creates no new corporation; it deprives the Sheppard asylum of no property; it adds no new powers nor does it deprive the corporation of any it before possessed. It affects none of the rights or obligations of the corporation nor does it remove Mr. Sheppard's name from the title of the institution. Its sole purpose is to change the name by adding Mr. Pratt's name to Mr. Sheppard's.

Tompson on Corporations, S. 289.
Boone on Corporations, S. 47, S. 31, S. 271.

223 In this respect the act differs from the statutes which were the subject of controversy in all the cases cited by the next of kin. In all of them the statute attempted to change the title to property.

It has been already shown that Mr. Sheppard's gift was without condition, so that the question to be determined is the simple question whether the name of a corporation may be changed by the legislature when the power of repeal or amendment is reserved in the charter.

It can hardly be doubted that generally the legislature has the power to change the name of a corporation. Presbyterian Church *vs.* Bloomfield, 111 Pa. St., 156. The cases in which this has been done are too numerous to mention. At every session of the legislatures laws are passed changing the names of corporations.

But it is contended that this cannot be done without the consent of the corporation. It is argued that "the name of this corporation was a part of its franchises and was inviolable." The trustees of the asylum having accepted the act of 1898 and assented to the change of name, it is further contended such action was in excess of their powers and void.

The same erroneous view of the facts appears in this contention. There was no condition in the charter or will of Mr. Sheppard that the name should not be changed.

The power of the trustees is not limited in the way suggested. Their powers will be found in the charter. The act of 1853, chap. 274 provides in section 2, "that the entire management of the corporation shall be vested in said trustees." The entire management of the corporation being vested by the charter in the trustees their will is the corporate will. They have by the usual procedure accepted the act changing the name, and this was within their powers.

The parties to the contract having consented to its modification in this way its obligation has not been impaired.

Jackson *vs.* Walsh, 75 Md., 306.

It would, moreover, be a sufficient answer to the contention that the law impairs the obligation of a contract to say that the alternative legatees and next of kin of Mr. Pratt are not parties to the contract or in any way interested in its performance. The provision of the Constitution referred to was never intended to permit persons who were not parties to a contract to insist on its inviolability. Nor can they complain of the action of the trustees. They are not beneficiaries, nor do they represent Mr. Sheppard. Ordinarily, the State alone can interfere in such cases; but in some cases citizens of a State were permitted to intervene in cases where bequests for public purposes were in question. If such action were proper in this case the alternative legatees cannot intervene becausse they are not citizens of the State. Their action is not for the purpose of enforcing the trust, but is purely selfish.

224 The last objection to the validity of the act is that it is contrary to article 3, section 29 of the constitution of Maryland which provides that "every law enacted by the General Assembly shall contain but one subject and that shall be expressed in its title." The act of 1898, chap. 17, is entitled "An act to change the name of the Trustees of the Sheppard Asylum," &c. The act contains a preamble with several recitals of fact. In section 1, after enacting that the name shall be changed, the act contains a clause which is the foundation of the claim under consideration. It is enacted "that the corporation under its new name shall have, hold and enjoy all the powers and functions which were heretofore possessed by or conferred on said corporation under and by its former name of 'The Trustees of the Sheppard Asylum' and shall hold in like manner all property or estate which it shall acquire by will or otherwise under the said change of title hereby made."

This clause is merely declaratory. It confers no new powers on the corporation. It might be stricken out of the act and the corporation would still possess the powers mentioned. It is matter foreign and irrelevant to the purpose of the act and its introduction does not make the law invalid.

M. & C. C. of Balto. *vs.* Reitz, 50 Md., 574.

But if the clause could be considered of any legislative force and void, because not indicated in the title of the act, it may be stricken out and the remainder of the act, which provides for changing the name, will be valid.

Stiefel *vs.* Md. Ins. Co., 61 Md., 144.

For these reasons, is must be held that the act is valid and that the "condition and bargain" on which Mr. Pratt devised the residue of the estate to the corporation has been complied with.

But it is next contended that though the change of name be valid and the corporation entitled, it takes no beneficial interest, but holds as trustee for the indigent insane.

In one sense every bequest to a charitable corporation is a trust. The gift must be devoted to the purposes for which the corporation is created and the court will enforce this duty. An absolute gift to a corporation, the object of whose incorporation was the founding and maintaining of an asylum for the insane, would be valid, notwithstanding the indefinite description of those intended to be benefitted.

Ould *vs.* Washington Hospital, 95 U. S., 313.

But it is not in this sense that the word "trust" is here used. The heirs and next of kin contend that a naked trust was created by Mr. Pratt's will; that the corporation took no beneficial interest in the gift but held as trustee for "the indigent insane."

225 A gift to trustees in trust for "the indigent insane" is undoubtedly void. In order to create a valid trust, the beneficiaries must be certain. Unless the persons to be benefitted are known, it is obvious the trust could not be carried out by the trustee or enforced by the court. Trusts in favor of an indefinite class, such as "the real distressed poor of Talbot county," or "indigent and necessitous poor persons," or "the necessitous Methodist Church of the United States," "the poor children belonging to the congregation of St. Peter's P. E. church," "the poor children of Caroline county who attend the poor or charity school at Hillsborough" have been held too indefinite to be enforced. When it appears that a testator intended that the donee should not take for his own benefit, but for the benefit of others who cannot be ascertained, the bequest fails, and the property given passes to the heirs, next of kin or residuary legatees, as the case may be. Neither the benevolent intentions of the testator, nor the usefulness of the supposed object of his bequest will suffice to uphold the gift if the persons to be benefitted cannot be ascertained.

If, therefore, a trust in favor of "the indigent insane" has been created by Mr. Pratt's will, it must fail and the property bequeathed pass to his next of kin. The rule is well settled. The authorities are numerous and discussion of this point would be idle. But the question arising under Mr. Pratt's will is not whether a trust is valid, but whether one has been created. The issue is trust *vel non*.

The first contention on this branch of the case is that the testator in providing that it was his "wish and will" that the income "shall be used" in a certain way, and that the income "shall be devoted" to the care of "the indigent insane," created a trust. These words are relied on to create the trust; there is no other evidence in favor of a trust.

It is frequently difficult to determine when a testator has added to a gift words of confidence, belief, desire, request or hope whether his meaning is to devote the gift to the purpose indicated and to exclude the donee from all beneficial interest, or whether the words are intended to explain the motives of the testator in making the gift, or to suggest to the donee a reasonable or proper use to be made of it. If it appears that the testator intended to exclude the donee from all beneficial interest and to require him to devote the gift to the purpose indicated, a trust is created which the court will

enforce. The donee holds only the legal title. But if the intention is not to exclude the donee from a beneficial interest, but merely to advise him as to the use of the gift, no trust is created, but the property is the donee's to enjoy as he pleases.

Precatory words do not always create a trust. The question in every case is one of intention. Expressions *per se* sufficient to create a trust may be deprived of that effect by a context expressly declaring or by implication showing no trust was intended. The question in all cases is, was the direction imperative. "The
226 real question to be determined when such words are used is, whether the confidence, hope or wish expressed is meant to govern the donee, or whether it was a mere indication of that which the testator thinks would be a reasonable or suitable use of the property conveyed, leaving the matter ultimately to the decision of the donee. (1 Jarman, 385, 406, n. 2.)

A distinction is made by the heirs-at-law and next of kin of Mr. Pratt between words expressive of hope, desire or expectation and words expressing will, and much stress was laid on the words "will" and "shall." There is no mystery in particular words, the question in every case is one of intention and words of the strongest import must yield to more convincing evidence of intention.

Precatory words are *prima facie* imperative, and create a trust.

Nunn *vs.* O'Brian, 83 Md., 200.
Negro Chase *vs.* Plummer, 17 Md., 165.
Williams *vs.* Worthington, 49 Md., 572.
Handley *vs.* Wrightson, 71 Md., 108.
Maught Ex. *vs.* Getzendanner, 65 Md., 532.
Colton *vs.* Colton, 127 U. S., 300.

"Difficulties of this nature, which are inherent in the subject-matter, can always be readily overcome by bearing in mind and rigidly applying in all such cases the test that to create a trust it must clearly appear that the testator intended to govern and control the conduct of the party to whom the language was addressed, and did not design it as an expression or indication of that which the testator thought would be a reasonable exercise of a discretion which he intended to repose in the legatee or devisee. If the objects of the supposed trust are certain and definite; if the property to which it is to attach is clearly pointed out; if the relations and situation of the testator and the supposed *cest-i que trust* are such as to indicate a strong interest on the part of the testator in making them partakers of his bounty; and above all, if the recommendation, or precatory clause, is so expressed as to warrant the inference that it was designed to be peremptory on the donee, the first and reasonable interpretation is that a trust is created which is obligatory and can be enforced in equity as against the trustee by those in whose behalf the beneficial use of the gift was intended."

Handley *vs.* Wrightson, 60 Md., 204.
See also, Negro Chase *vs.* Plummer, 17 Md., 165.
Williams *vs.* Worthington, 49 Md., 579.
Maught *vs.* Getzendanner, 65 Md., 528.

The words relied on in this case are sufficient to create a trust, but it is contended for the Sheppard asylum that the force of these words is overcome by other words in the will.

227 It is contended, as a rule of construction, that when the language of the gift imports an absolute estate in the donee, subsequent precatory words will not create a trust. Free and unlimited powers of disposition by the donee are inconsistent with any binding obligation. This rule is well established and the authorities are numerous.

Williams *vs.* Worthington, 49 Md., 572.
Howard *vs.* Carusi, 109 U. S., 730.
Nunn *vs.* O'Brian, 83 Md., 200.

In Hutchinson *vs.* Tenant, 8 L. R. Ch., 540, Jessel M. R., discussed the rule and followed Lambe *vs.* Eames, L. R., 6 Ch., 597, refusing to follow cases to the contrary which he cites. See also,

Irvine *vs.* Sullivan, 8 L. R. Eq., 673.
Webb *vs.* Wooles, 2 Sim., 267.
Parnell *vs.* Parnell, 9 Ch. D., 96.
White *vs.* Briggs, 15 Sim., 33.
Sale *vs.* Moore, 1 Sim., 534.
Johnson *vs.* Rowland, 1 De G. & S., 356.
Winch *vs* Brutton, 14 Sim., 378.
Bardwell *vs.* Bardwell, 9 Sim., 358.
Fox *vs.* Fox, 27 Beav., 301.
Green *vs.* Maindell, 1 Drewry, 646.
McCulloh *vs.* McCulloh, 11 W. R., 504.
Mackett *vs.* Mackett, 14 L. R. Eq., 69.
Van Gorder *vs.* Smith, 99 Ind., 405.
Hopkins *vs.* Steuart, 111 Pa., 287.

It is argued that mere words of limitation do not suffice to rebut the presumption of trust. A bequest to one, and his heirs and assigns, would create the greatest estate known to law, a fee simple, and yet this would be entirely consistent with a trust; that words of limitation in the gift refer only to the legal estate and would not rebut the presumption of a trust created by the precatory words, and that the words contemplated by the rule are words indicating that the donee was to take beneficially.

In a number of the cases cited, mere words of limitation were held sufficient to overcome the force of the precatory words. But if this rule requires that the words in the gift should impart a beneficial interest in the donee, such words are not wanting in Mr. Pratt's will.

In paragraph 1, of clause 12, the testator says: "I do now hereby give, devise and bequeath all the rest, residue and remainder of my estate, of every kind and description, whether real, personal or mixed, and wherever the same may be situated, of which I may die

228 possessed or be in any way entitled to at the time of my death, after the payment of all debts justly due by me, and after satisfying all the devises and bequests hereinbefore set

forth, to "The Trustees of the Sheppard Asylum" a corporation already incorporated by the General Assembly of the State of Maryland by said style and title, and its successors forever."

These words, it may be claimed, though giving the property fully by provisions unusually elaborate, are still consistent with a trust, as they may refer only to the legal estate.

Assuming, for the purpose of discussion, that this is true, the subsequent words are of a different character. He says: "It being my intention to make said corporation 'The Trustees of the Sheppard Asylum' the residuary legatee and devisee of and under this my last will and testament." These words mean that the donee is to take beneficially.

Another rule of construction is that where the purpose of the gift is for the benefit of the donee himself, and not for others, the words will not be construed to be peremptory and no trust will be created. The donee may claim the gift without devoting it to the purpose indicated. Illustrations of this rule will be found in 1 Jarman on Wills, 397.

The Sheppard asylum was incorporated as an asylum for the insane. Buildings and grounds are essential and one of the purposes of the institution is the care of the indigent insane. The gift must be considered to be for the benefit of the donee and the words in dispute to refer only to Mr. Pratt's opinion as to a proper use of the gift.

This is confirmed by other provisions of the will. In paragraph 1 of clause 12, the testator disposes finally of the principal of his estate. It is giving to the Sheppard asylum in most positive and comprehensive terms, subject to the condition and bargain that the name be changed. There is no other condition referred to. No evidence of a trust could be discovered by the most fertile imagination in the testator's words disposing of the principal.

In paragraph two the words in dispute are found. The testator is dealing entirely with the income. The principal he has given unreservedly to the asylum in paragraph one. In paragraph two he speaks of the income of "my aforegoing donation," thus referring to paragraph one as operating to convey the gift.

He introduces the clause in dispute by saying he does not wish to alter the operations or management or workings of said asylum. He leaves almost everything to the discretion of the trustees. The income is not to be wholly but "*mainly*" used in the way indicated; the trustees are to determine whether patients shall pay or be treated free, and, if required to pay, how much they must pay; the only thing which appears to be obligatory is that the treatment is to be free, or at low charges. The patients are to be treated in the most advisable manner.

While the language of the testator elsewhere is clear and definite, apt technical terms being used when required, and his plan
229 certain, in the clause in dispute the language is very vague and uncertain, and no definite plan can be fairly made out—all is uncertain.

The position of the clause in the will, its minor purpose, the

broad discretion, the uncertain and indefinite expressions, and the absence of any well-defined plan, are not indicative of command.

One of the purposes of the institution was the care of the indigent insane. The word "asylum" implies charity. In its original meaning the word means a place of refuge, a sanctuary. In its modern sense it means an institution for the protection and cure of persons afflicted, such as the blind, the deaf and dumb, the insane. Asylums are supported largely by donations and it is one of the objects to care for the poor. But an institution is none the less an asylum when it also takes patients for pay. Queen *vs.* Overseers, 6 Best & Smith, 451. Such persons aid the institution by the sums they pay, and receive a skilled treatment and care which would, except in such an institution, be beyond the means of any but the very rich.

The whole will being considered, it is more reasonable to believe that Mr. Pratt, by the words in controversy, intended not to create a trust with a legal estate in the Sheppard asylum and an equitable estate in the indigent insane, but to give the legacy to the asylum beneficially and for the purposes for which it was incorporated, one of which was the care of the indigent insane, and that the words in controversy were added to the positive and comprehensive provisions relating to the disposition of the principal as indicating his reasons for the gift or his views about what would be the best use to put the income to. It is very certain he did not intend his next of kin, for whom he had liberally provided in his lifetime, to have the property.

But there are other grounds upon which it must be held no trust was intended. In order to create a trust, the property which is the subject of the trust must be certain.

In this case, the whole income, a gift of which might by construction carry the principal, is not conveyed. The income is to be "*mainly*" used in the way indicated. This precludes all idea of trust.

Williams *vs.* Worthington, 49 Md., 572.
Howard *vs.* Carusi, 109 U. S., 733.
Pennock's Estate, 20 Pa. St., 268.

The next claim is that a trust was created, because the gift was to the corporation, not for its general purposes, but for a special purpose. It is sufficient to say that it appearing that this direction was not imperative, there is consequently no trust.

230 But in addition to this is the fact that the rule of law is not as stated.

Barnum *vs.* M. & C., 62 Md., 276.
Eutaw Baptist Church *vs.* Stevely, 67 Md., 496.
English *vs.* Vestry of P. E. C., 53 Md., 467.
Crisp *vs.* Crisp, 65 Md., 423.
—— *vs.* Vance, 39 La. An., 371.
McDonough *vs.* Murdock, 15 How., 367.

There being no trust and the title vesting immediately, there can be no question of perpetuities.

Such is the result of the application of these rules of construction which the wisdom of many generations has provided for ascertaining the intention of those who can no longer speak for themselves. It may be that cases occur where these rules, by reason of their general application, work injustice, but such is not the case at present. The wisdom of the law is shown when the result attained is considered in connection with the facts of this particular case. To put one's self in the position of the testator is a valuable rule in construing wills.

Mr. Pratt had resided in Baltimore since he was a very young man. He had amassed a large fortune in business enterprises. He was identified with the city and connected with many of our institutions, public and private, and took a lively interest in the welfare and progress of the community. His public spirit was shown in his lifetime, not only in a personal interest in and gifts to many of our scientific and charitable institutions, but in many other ways, notably in the gift of a large sum to endow a public library. His last wish was to continue his benevolent designs, and aid by his wealth an afflicted class sadly in need of care and protection.

He did this at the sacrifice of no legal or moral obligation. He disappointed no reasonable expectations. He disinherits no children, for he left no descendants. His anxiety for the welfare of his widow is shown in liberal and careful provision for her future comfort. He bequeaths legacies to his friends, his namesakes, the church at the place of his birth, to the town in which he was born for the support of a library, and to institutions in which he was interested. His business associates, his clerks and domestics are all remembered.

Nor had he been unmindful of his kindred. He had, as he says in his will, provided liberally for them in his lifetime, and it was stated in the argument he had divided among them the large sum of $1,100,000, nearly as much as he bequeathed the Sheppard asylum.

Under these circumstances, the court will not be subtle and astute in seeking for reasons to defeat the testator's cherished wish, nor conjure up, out of vague and indefinite expressions, a trust for the indigent insane for the sole purpose of defeating it, and depriving that class of the benefit of the testator's bequest.

231 *Decree.*

(Filed 25th July, 1898.)

THE TRUSTEES OF THE SHEPPARD AND Enoch Pratt Hospital *vs.* JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, Deceased.	Docket 68 A, 1898.
JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, Deceased, *vs.* THE TRUSTEES OF THE SHEPPARD AND Enoch Pratt Hospital *et al.*	Docket 76 A, 1898. In the Circuit Court No. 2 of Baltimore City.
THE TRUSTEES OF THE SHEPPARD AND Enoch Pratt Hospital *vs.* JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, Deceased.	Docket A 80, 1898.
ISAAC PRATT, JUNIOR, and SUSANNA K. Tobey *vs.* JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, Deceased, *et al.*	Docket A 97, 1898. "Consolidated Cases."

This cause being ready for hearing, and having been submitted, the counsel for the several parties were heard, and the proceedings had in the cause read and considered, it is thereupon, on this 25th day of July, in the year eighteen hundred and ninety-eight,
232 by the circuit court number 2 of Baltimore city, adjudged, ordered and decreed, that this court assume jurisdiction of the estate of Enoch Pratt, late of Baltimore city, deceased, in so far as the same remains unadministered, and that James A. Gary and Arnold S. Hyde, executors of the estate of Enoch Pratt, late of Baltimore city, deceased, in so far as the same remains unadministered, and that James A. Gary and Arnold S. Hyde, executors of the last will and testament of the said Enoch Pratt, continue the further administration of said estate and fully administer the same under the direction and supervision of this court.

II. And it appearing to the court that all of the specific and pecuniary legacies, by the last will and testament of the said Enoch Pratt bequeathed, have been paid and satisfied by the said executors of said last will, except the legacy of fifteen thousand dollars bequeathed unto David G. Pratt and Gerd. C. Tobey, trustees, for

the purposes set forth in clause nine of the said testator's last will and testament, and there having been no objection intervened or shown why payment thereof should not be made, it is further adjudged, ordered and decreed, that the said executors of said last will and testament be, and they are hereby ordered and directed to pay unto the said David G. Pratt and Gerard C. Tobey, trustees under the ninth clause of said last will and testament, the said sum of fifteen thousand dollars, for the uses and purposes declared of and concerning the same in the said ninth clause of the said last will and testament, upon receiving from them a due and proper release and acquittance therefor.

III. And it further appearing to the court from the proceedings and accounts filed in said consolidated cause that the said executors are ready and willing to assign, transfer and convey to the residuary legatee and devisee, The Trustees of the Sheppard and Enoch Pratt Hospital, or to whomsoever may be entitled thereto, all of the rest and residue of the estate of the said Enoch Pratt in their hands, which constitutes a part of said estate, and it further appearing to the court, that according to the true construction of the said last will and testament of the said Enoch Pratt, deceased, the condition thereby imposed having been fully complied with, The Trustees of the Sheppard and Enoch Pratt Hospital, a corporation, is entitled to the whole of the rest and residue of the estate, real, personal and mixed, whereof the said Enoch Pratt died seized and possessed, and the accretions resulting therefrom under the administration of the said executors in said last will named; it is thereupon further adjudged, ordered and decreed that the said James A. Garey and Arnold S. Hyde, executors of the last will and testament of the said Enoch Pratt, deceased, be and they are hereby ordered and directed to assign, transfer and convey by proper deeds, assignments and transfers, and also to deliver and pay over unto The Trustees of the Sheppard and Enoch Pratt Hospital, all of the rest and residue of the estate whereof the said Enoch Pratt, late of Baltimore city, deceased, died seized or possessed, together with all of the ac-
233 cretions resulting therefrom under the administration of the said executors, and for the purpose of obtaining an accurate statement of the amount of the said rest and residue of said estate and the accretions thereto, the said James A. Gary and Arnold S. Hyde, executors as aforesaid, are hereby ordered and directed to make full and perfect report thereof to this court within ten days from the date of this decree.

V. And it is further adjudged, ordered and decreed that the exceptions filed in the case of Isaac Pratt *et al. vs.* The Trustees of the Sheppard and Enoch Pratt Hospital *et al.*, to the admissibility of the testimony offered therein be and the same are hereby sustained.

VI. And it is further adjudged, ordered and decreed that the costs incurred in these proceedings be paid out of the rest and residue of the estate of the said Enoch Pratt, deceased.

GEORGE M. SHARP.

Order for Appeal of Isaac Pratt, Jr., et al., Plaintiffs.

(Filed 9th August, 1898.)

THE TRUSTEES OF THE SHEPPARD AND ENOCH Pratt Hospital *vs.* JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, Deceased.	In the Circuit Court No. 2 of Baltimore City.
JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, Deceased, *vs.* THE TRUSTEES OF THE SHEPPARD AND ENOCH Pratt Hospital, a Corporation; David G. Pratt and Gerard C. Tobey, Trustees of Congregational Church and Society of Titicut Parish, North Middleboro, Mass.; Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, I. Lowell Pratt, Morland L. Pratt, Isaac Pratt, Jr., and Susannah Tobey, Non-residents.	In the Circuit Court No. 2 of Baltimore City.
234 THE TRUSTEES OF THE SHEPPARD AND Enoch Pratt Hospital *vs.* JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament and Codicil Thereto of Enoch Pratt, Deceased.	In the Circuit Court No. 2 of Baltimore City.
ISAAC PRATT, JR., and SUSANNA K. TOBEY *vs.* JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, Dec'd, *et al.*	In the Circuit Court No. 2 of Baltimore City. Consolidated Cases.

Mr. CLERK: Enter an appeal on behalf of Isaac Pratt, Jr., and Susanna K. Tobey, from the decree passed in the above consolidated cases by the court on the twenty-fifth day of July, 1898.

ISAAC PRATT JR., AND
SUSANNA K. TOBEY,
By W. IRVINE CROSS, *Solicitor.*

Order for Appeal of Ellen J. O. Phinney and Others.

(Filed 9th August, 1898.)

THE TRUSTEES OF THE SHEPPARD AND ENOCH Pratt Hospital
vs.
JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, Deceased. } (First Case.)

235 JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt,
vs.
THE TRUSTEES OF THE SHEPPARD AND ENOCH Pratt Hospital, a Corporation; David G. Pratt and Gerard C. Tobey; Trustees — Congregational Church and Society of Titicut Parish, North Marlboro, Mass.; Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, I. Lowell Pratt, David G. Pratt, Edmund T. Pratt, Marland L. Pratt, Isaac Pratt, Junior, Susanna K. Tobey, Non-residents. } (Second Case.)

THE TRUSTEES OF THE SHEPPARD AND ENOCH Pratt Hospital
vs.
JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will & Testament & Codicil Thereto of Enoch Pratt, Dec'd. } (Third Case.) In the Circuit Court No. 2 of Baltimore City.

ISAAC PRATT, JR, and SUSANNA K. TOBEY
vs.
JAMES A. GARY and ARNOLD S. HYDE, Executors of the Last Will and Testament of Enoch Pratt, Deceased; Ellen J. O. Phinney, Gerard C. Tobey, Horace C. Tobey, David G. Pratt, Edmund T. Pratt, Marland L. Pratt, Lowell Tyler Pratt, Emily Pratt, Stella Potter, and James A. Potter, Jr., Her Husband; Emily L. Pratt, Lowell Tyler Pratt, Administrator of I. Lowell Pratt, Deceased, Non-residents; Trustees of the Sheppard and Enoch Pratt Hospital, a Corporation. } (Fourth Case.)

236 Mr. CLERK: Enter an appeal on behalf of Ellen J. O. Phinney, Gerard C. Tobey, Horace C. Tobey, David G. Pratt, Edmund T. Pratt, Marland L. Pratt, Lowell Tyler Pratt, Emily

Pratt, Stella Potter, and James Potter, her husband; Emily L. Pratt and Lowell Tyler Pratt, administrators of I. Lowell Pratt, deceased, from the decree of the court passed in above case on the twenty-fifth day of July, 1898.

ELLEN J. O. PHINNEY,
GERARD C. TOBEY,
HORACE C. TOBEY,
DAVID G. PRATT,
EDMUND T. PRATT,
MARLAND L. PRATT,
LOWELL TYLER PRATT,
EMILY PRATT,
STELLA POTTER AND
JAMES POTTER, *Her Husband*,
EMILY L. PRATT AND
LOWELL TYLER PRATT,
Administrators of I. Lowell Pratt, Deceased,
By ABNER McKINLEY,
E. J. D. CROSS, *Solicitors*.

Agreements of Counsel as to Record to Court of Appeals.

(Filed 10th September, 1898.)

THE TRUSTEES OF THE SHEPPARD AND ENOCH Pratt Hospital *vs.* JAMES A. GARY and ARNOLD S. HYDE, Executors.	
JAMES A. GARY and ARNOLD S. HYDE, Executors, *vs.* THE TRUSTEES OF THE SHEPPARD AND ENOCH Pratt Hospital *et al.*	In the Circuit Court No. 2 of Baltimore City.
THE TRUSTEES OF THE SHEPPARD AND ENOCH Pratt Hospital *vs.* JAMES A. GARY and ARNOLD S. HYDE, Executors.	Consolidated Cases.
ISAAC PRATT, JUNIOR, ET AL. *vs.* JAMES A. GARY and ARNOLD S. HYDE, Executors.	

237 It is agreed that the clerk in making out the record in the above consolidated case, shall include therein all the papers mentioned and set out in the memorandum thereof hereto annexed, but shall not transcribe more than once, any of such papers; when-

ever the same paper occurs more than once in said memorandum, reference to the copy thereof previously made, giving the title of the previous exhibit wherein the same appears shall be made, instead of inserting the same paper more than one time.

WM. PINKNEY WHYTE,
WILLIS & HOMER,
Solicitors for Trustees Sheppard & Enoch Pratt Hospital.
W. IRVINE CROSS,
Solicitor for Isaac Pratt, Jr., and Susannah K. Tobey.
BARTON & WILMER,
Solicitors for Pratt's Executors.
E. J. D. CROSS,
Solicitor for Ellen J. O. Phinney et al.

Annexed to the aforegoing agreement is the following, viz:

TRUSTEES S. & E. P. HOSPITAL *vs.* J. A. G. & A. S. H., Executors, &c. } A 68, 1898.

Papers in This Case to be Inserted in Record.

7 March, 1898.—Bill and exhibits (No. 3668 A).
Exhibit A.—Ch. 274 of 1853. Original charter.
Exhibit B.—Ch. 9 of 1886, amendment.
8 Mar., 1898.—Exhibit C, copy E. Pratt's will and letters test'ry.
Administration account of J. A. G. and A. S. H., filed with bill.
Exhibit D.—Extract from Pratt's will.
Exhibit E.—Chapter 17, of acts of 1898.
Exhibit F.—Resolution of board of directors.
Answer of defendants.
General replication.
Petition for leave to take testimony and order of court thereon.
238 Depositions and Plaintiffs' Exhibit Examiner G. A. P., Nos. 1 and 2, 3, 4 and E. P., 1 and 2.
Examiner Exhibit G. A. P., No. 1, notice of trustees of securing act of assembly.
G. A. P., No. 2.—Resolution accepting change of name.
G. A. P., No. 3.—Notice that legacy has been accepted.
27 January, 1897.—G. A. P., No. 4.

J. A. G. and A. S. H. *vs.* TRUSTEES and Others. } A. 76, 1898. No. 3676 A. Bill of Interpleader.

For Record.

10 March, 1898.—Bill and exhibits.
A.—E. Pratt's will.
B.—Executors' 1st account.
C.—Charter 1853, c. 274.
D.—Am't 1886, ch. 9.

E.—Am't 1898, ch. 17.
F.—Copy of bill in first case.
G.—Notice of alternate residuary legatees.
H.—Account of executors for settlement.
Demurrer of trustees.
Answer of residuary legatees, &c.
Answer of Isaac Pratt *et als.*

TRUSTEES, &c.,
vs.
J. A. G. and A. S. H., &c. } A 80, 1898. No. 3680 A. Real Estate Case. Receivership.

12 Mar., 1898.—Bill of complaint.
Exhibit No. 1.—Charter.
Exhibit No. 2.—Am't.
Exhibit A.—Will of E. Pratt.
Exhibit B.—Letters test'y.
239 Exhibit C.—1898, c. 17.
Exhibit D.—Resolution of b'd accepting am't.
Exhibit E.—Inventory of real estate.
Order of court app't'g receiver and granting inju.
Receiver's bond; injunction bond; injunction issued.
Answer of executors.
Petition of Ellen J. O. Phinney, &c., for appoint. coreceiver, and order et.
Order extending time for answer.
Receiver's answer.
Exhibit W. P. W., No. 1.
Petition of Isaac Pratt, &c., for coreceiver.
Answer, pl'ffs to last petition.

ISAAC PRATT, JR., and S. K. TOBEY
vs.
J. A. G. and A. S. H., &c., &c. } A 97, 1898. No. 3697 A. For Record.

Bill of Complaint.

Exhibit A.—E. Pratt's will.
Exhibit B.—Letters testamentary.
Exhibit C.—Ch. 274 of 1853.
Exhibit D.—Sheppard's will.
Exhibit E.—Ch. 17, 1898.
Exhibit F.—J. L. Pratt's letters of administration, &c.
Exhibit G.—Bill of trustees for payment of legacy (residu-m).
Answer of executors.
Answer of Trustees of S. and E. P. H.
Exhibit 1.—Charter.
Exhibit G. A. P.—Letter to Gary.
Exhibit J. A. G.—Answer from Gary.
Answer of Ellen J. O. Phinney, &c.
General replication to answers of trustees and ex'rs.
Petition of pl'ff to take testimony and order.

Order of court to close testimony and hearing fixed for June 13, 1898.

240 Depositions, and Pl't'ffs' Exhibit Examiner R. D., No. 1, 2, 3, 4, 5.

Reports to governor, &c.

G. A. P., No. 1.—Bond for admission.

G. A. P., No. 2.—List of rates paid by patients.

Def'ts' Exh. G. A. P., No. 1.

Def'y $33,635.14 statement of deficit (see p. 75 of testimony correcting 39 question).

Def'ts' Exh. G. A. P., No. 3.—Letter of Moses Sheppard.

Def'ts' Exh. G. A. P., No. 4.—Certificate of register of wills of the appearance of the S. A. at distribution.

Motion to strike out certain testimony.

15 June, 1898.—Pl'ffs' exceptions to testimony.

25 July, 1898.—Order of court consolidating cases; A 68, 1898; A 76, 1898; A 80, 1898; A 97, 1898.

1898, 3 August.—Opinion.

1898, 25 July.—Decree and orders for appeal and this agreement.

Which said appeal being by the court here also granted, it is thereupon ordered by the court here that a transcript of the record of proceedings in the case aforesaid be transmitted to the court of appeals under the agreement of counsel filed in the cases, and the same is transmitted accordingly.

Test:

ALF. J. SCHULTZ,
Clerk of the Circuit Court No. 2 of Baltimore City.

In testimony whereof, that the foregoing is a full and true transcript of the aforegoing papers taken from the record of proceedings in the circuit court No. 2, of Baltimore city, in the causes therein mentioned, I hereto set my hand and affix the seal of the said circuit court No. 2, of Baltimore city, this 23d day of September, in the year of our Lord one thousand eight hundred and ninety-eight.

(Seal's place.)

Test:

ALF. J. SCHULTZ,
Clerk of the Circuit Court No. 2 of Baltimore City.

241 This cause came on to be heard, was taken up and argued by counsel; on consideration whereof the court finds there is no error apparent on the record in the proceedings and judgment of the circuit court No. 2 of Baltimore city. It is therefore, on the 21st day of December, 1898, considered by the court that the said judgment be, and the same hereby is, affirmed, with costs in this court, to be paid out of the fund. (See decrees.)

And on the 21st day of December, 1898, the court of appeals filed the following opinions and decrees, to wit:

242 This cause came on to be heard, was taken up and argued by counsel; on consideration whereof the court finds there is no error apparent on the record in the proceedings and judgment of the circuit court No. 2 of Baltimore city. It is therefore, on the

21st day of December, 1898, considered by the court that the said judgment be, and the same hereby is, affirmed, with costs in this court, to be paid out of the fund.

And on the 21st day of December, 1898, the court of appeals filed the following opinions and decrees, to wit:

243 Court of Appeals of Maryland, October Term, 1898.

ISAAC PRATT, JR., and SUSANNAH K. TOBEY
vs.
THE TRUSTEES OF THE SHEPPARD & ENOCH PRATT HOSPITAL ET AL.

The appeal in this case, standing ready for hearing, was argued by counsel for the respective parties, and the proceedings have since been considered by the court.

It is thereupon, this twenty-first day of December, A. D. 1898, by the court of appeals of Maryland and by the authority thereof adjudged, ordered, and decreed that the decree of the circuit court number two of Baltimore city made in this cause on the twenty-fifth day of July, in the year 1898, be, and the same is hereby, affirmed, with costs in this court, to be paid out of the fund.

JAS. McSHERRY.
DAVID FOWLER.
JOHN P. BRISCOE.
HENRY PAGE.
A. HUNTER BOYD.
JAMES A. PEARCE.

Filed December 21st, 1898.

244 Filed December 21st, 1898.

Court of Appeals of Maryland, October Term, 1898.

ISAAC PRATT, JR., and SUSANNAH K. TOBEY
vs.
THE TRUSTEES OF THE SHEPPARD AND ENOCH PRATT HOSPITAL and Others.

Chief Judge McSHERRY delivered the opinion of the court:

In these proceedings the validity of the twelfth or the residuary clause of the will of the late Enoch Pratt is assailed by his heirs-at-law and next of kin and by his alternative residuary legatees and devisees. There are four cases which have been consolidated, but it is not necessary to set forth the pleadings or any part of the pleadings therein, as the disposition of the questions presented for decision depends largely on the terms of the will. The cases have been argued with marked zeal and ability on both sides, and we have been greatly aided by the discussion at the bar in our examination of the matters in controversy.

The clause in dispute is in these words: "Having in my lifetime liberally provided for my niece and nephews hereunder named, I

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do now hereby give devise and bequeath all the rest and residue and remainder of my estate of every kind and description, whether real, personal or mixed, and wherever the same may be situate, of which I may die possessed or be in any way entitled to at the time of my death, after the payment of all debts justly due by me, and after satisfying all the devises and bequests hereinbefore set
245 forth, to the Trustees of the Sheppard Asylum, a corporation duly incorporated by the General Assembly of the State of Maryland by said name, style and title, and its successors forever, it being my intention and meaning to make said corporation the Trustees of the Sheppard Asylum, the residuary legatee and devisee under this my last will and testament.

"And I direct my executors to set over, transfer and convey by proper deeds, assignments and transfers the said residue of my estate to the said corporation, upon and subject, however, to the following condition and bargain, namely: That the said trustees shall adopt as the name and style of said corporation the title of 'The Trustees of the Sheppard and Enoch Pratt Hospital' and shall obtain at the first session of the General Assembly of Maryland after my death, an amendment to their charter authorizing the said change of title and adopting the said name of 'The Trustees of the Sheppard and Enoch Pratt Hospital' as the future title of said corporation.

"While I do not wish to alter the operations and management in the working of the said asylum as now existing and being carried on, it is my wish and will that the income from my said residuary estate shall be used to complete the present buildings and grounds and for the erection of such other buildings or building as will accommodate not less than two hundred additional inmates, and after that the income from my aforegoing donation shall be devoted mainly to the care of the indigent insane in the most advis-
246 able manner at *very low charges* or absolutely *free*, as the trustees of said corporation in the exercise of their best judgment as to the rate to be charged may deem best and wisest to promote the object of this donation.

"Provided however and it is expressly my will, that in case the said Trustees of the Sheppard Asylum fails to obtain from the General Assembly of Maryland at its first session after my death the amendment to the charter of said institution hereinbefore stipulated and provided for, and fail to adopt the name for said corporation of the 'Trustees of the Sheppard and Enoch Pratt Hospital' then and in that case it is my will and I then give devise and bequeath, in lieu of the aforegoing provision, the said residue of my estate to my niece, Ellen J. O'Phinney, and to my nephews, Gerard C. Tobey, Horace P. Tobey, J. Lowell Pratt, David G. Pratt, Edmund T. Pratt and Morland L. Pratt, to be in that case set apart for and equally divided among them and the issue *per stirpes*, of any of them who may be dead at the time of my decease, such issue to take the share to which its or their parent would, if living, have been entitled.

"I direct my executors, until it shall have been decided as above provided, whether the said condition of my aforegoing devise and bequest of said residue will be performed that is to say, whether the

said corporation will obtain authority as aforesaid to change its title, and will in fact adopt the title above designated—to keep all buildings and improvements on my property insured and in good order and condition, and pay all charges and taxes thereon,
247 and to collect the rents and income of said residue of my estate, and to invest the said net income in Baltimore city stock, the same to be added to and constitute a part of the said residuary estate."

Mr. Pratt died in September, eighteen hundred and ninety-six. At the January session, eighteen hundred and ninety-eight, of the General Assembly of this State a statute was enacted changing the corporate name of the Trustees of the Sheppard Asylum to "The Trustees of the Sheppard and Enoch Pratt Hospital," and this change was agreed to by the body corporate. The condition, and the sole condition, prescribed in the twelfth clause of the will having been complied with, it is now insisted, *first*, that the residuary clause creates a trust which is void, because so vague and uncertain as to the objects to be benefited that it cannot be enforced, and that therefore the next of kin and heirs-at-law, a brother and a sister of the testator, are entitled to the property constituting the residuum; *secondly*, that the residuary clause creates a perpetuity, and is therefore void; *thirdly*, that the *act of 1898, ch. 17*, changing the name of the Sheppard Asylum to the Sheppard and Enoch Pratt Hospital, is unconstitutional and void, and that therefore the residuary estate passed to the alternative residuary legatees and devisees, a niece and six nephews. The last position will be considered in the next succeeding case. As the second proposition is dependent entirely upon the disposition which may be made of the first one, we now proceed to examine and consider the first contention.

It is safe to say that thousands of cases have been decided
248 where the same or synonymous words in different wills have, in view of the unlike circumstances attending their use and the contrariety of the contexts where they are found, received different, and often widely different, interpretations; and it has in consequence frequently been observed that the effect given or the meaning ascribed to a particular word in the construction of one will is by no means a sure guide for its application, or a reliable definition of its meaning, when used in an apparently similar clause of some other individual's will; and this of necessity must be true when we take into account the diversity of the subjects dealt with, the inequality in the capacity of the testators to clearly express their intentions, the flexible character of almost every word in a living and a constantly changing language, and the numerous and dissimilar designs and motives revealed in testamentary dispositions. If, without first finding from the four corners of the instrument what the testator's purpose or intention really was, we turn for its ascertainment to the multitude of adjudged cases wherein the words he has used have been given a meaning in other wills, his design may be easily frustrated, and, though perfectly plain in itself, might and most probably would be so shrouded in obscurity as to be hopelessly unintel-igible. It is not meant by what has just been said to inti-

mate that there are no established or recognized rules or canons of construction to which resort may be had in cases of doubt or difficulty to solve a seeming uncertainity. These rules or canons
249 are invoked not to defeat but to give effect, when possible, to the expressed intention. To avoid misunderstanding, it may not be amiss to remark that we distinguish between rules of construction which are appealed to with a view of upholding an intention and rules of policy or of property which cannot be disregarded even though they defeat the most clearly stated purpose.

If we lay out of view for the moment all canons of construction and critically read the words of the clause in controversy, for the simplest and most obvious method of discovering the intention of a testator is to read the language he has employed to give expression to that intention, his purpose is clearly manifested; and if that purpose, thus declared, does not invade some rule of property or is not repugnant to some settled policy of the law, it ought to, and certainly will, prevail. What, then, has he said?

He starts with the assertion that he had in his lifetime liberally provided for his niece and nephews, who are the alternative residuary legatees and devisees. That he did do this is abundantly clear from the evidence. To each of the six nephews and to the niece and to another nephew who was not named as an alternative legatee he gave, in eighteen hundred and ninety and ninety-two, two hundred thousand dollars, or one million six hundred thousand dollars in the aggregate. He therefore did not intend that they or the appellants in this case, who are not mentioned in the will, should receive any part of the estate disposed of by the residuary clause, unless, as respects the alternative residuary legatees and
250 devisees, the condition on which the gift to the Sheppard asylum was made to depend should fail to be complied with by the omission of the legislature to change the name of the asylum to the Sheppard and Enoch Pratt Hospital. We begin, then, with the postu ate—and an obvious postulate it is—that the testator did not design these contesting parties to have any portion of his residuary estate at all, and if, by reason of an interpretation that may be placed on his will, they do succeed to it they will get it in spite of his unmistakable intention that they should not possess or enjoy any part or parcel of it whatever. But it is equally clear that he intended the Sheppard Asylum, a corporation, "*and its successors forever*" to have and to hold this residuum, for he explicitly declares, "it being my intention and meaning to make said corporation, the Trustees of the Sheppard Asylum, the residuary legatee and devisee under this my last will and testament;" nor does he stop with that emphatic declaration, for he follows it with a specific instruction to his executors "to set over, transfer and convey by proper deeds, assignments and transfers the said residue of my estate to the said corporation, upon and subject, however, to the following condition and bargain:" and then comes the provision with respect to the change of name. If the clause had stopped here there can be no pretence that an absolute estate in the personalty and a fee in the realty had been given, dependent on the single condition in regard

to the change of the name, and when that condition was complied with by the passage and acceptance of the *act of* 1898, *ch.* 17, the title,
assuming the clause had stopped as just indicated, would
251 have become indefeasible, provided the statute is valid and free from constitutional objections.

It is too clear for discussion that up to this point of the clause Mr. Pratt obviously intended the Sheppard Asylum to take by deed, transfers, and assignments from his executors, and not immediately under the will alone, the whole and entire interest and estate which he himself had in the residuary property. He gave it to the Sheppard Asylum upon a condition and bargain, and when that condition and bargain had been complied with and entered into, the corporation was in a condition to enforce a conveyance and transfer from the executors to itself. The gift being made upon a single condition and bargain, and being made in terms that import an absolute donation upon a compliance with the condition and a performance of the bargain, it is not to be assumed, in the absence of an express declaration, certainly not upon a bare construction, when later on he uses words looking to the disposition to be made of the *income* that may arise from the donation, that he intended by those words to convert the original gift into a gift merely in trust—to cut down the absolute estate by engrafting on it *through the income*, an imperative trust—particularly when the words thus relied on to accomplish that result are capable of an interpretation which will not bring about such a palpable conflict or inconsistency in one and the same clause of the will.

There is a peculiar significance in the use of the word "*bargain*"
as indicating the nature of the estate given by the residuary
252 clause. The gift is made upon something more than an ordinary condition, for the condition is coupled with a term that imports the characteristics and the elements of an obligatory contract. The testator contracts—he bargains—to give the Sheppard Asylum the residuum of his estate, provided the trustees agrees to include his name in the title of the body corporate. The Trustees of the Sheppard Asylum are to become the owners of the property for and upon the consideration which he specifically named. Can it be doubted or questioned when this bargain*ed* was closed—offered by him and accepted by the body corporate*d* and sanctioned by the General Assembly—that the right of the corporation to possess and enjoy as its own the fruits of the contract was complete? If this right was complete and perfect, as we think it manifestly was, then a beneficial, an actual ownership must have been intended by the testator to be vested in the Sheppard Asylum, and it took or was designed to take an absolute estate.

After making this absolute donation the testator declares that whilst he did not wish to alter the operations and management in the working of the Sheppard Asylum as then conducted, "it is my *wish and will* that the income from my residuary estate shall be used to complete the present buildings and grounds and for the erection of such other buildings or building as will accommodate not less than two hundred additional inmates, and after that the income from my aforegoing do-

nation *shall* be devoted *mainly* to the care of the indigent insane in the most advisable manner at very low charges or absolutely free, as the trustees of said corporation in the exercise of their best judgment
253 as to the rate to be charged may deem best and wisest to promote the object of this donation." This is the clause which it is claimed creates a trust and was intended to create a trust, and which trust, when created, it is further insisted, is void for uncertainty. We are thus brought face to face with the question: Does this clause, located as it is, following a gift that is unmistakably absolute, cut down the estate thus given to a trust estate? Does the clause raise an imperative trust? As we have said, and now repeat, it cannot be assumed, in the absence of an express declaration, that the testator meant to undo what he had just done—that he intended to convert what he was so careful to describe as an absolute estate into one far different and less unlimited. He has not *said* that he gave the donation upon trust. He has said all he well could say to indicate the contrary. If, however, a trust has been created, we find no manifestation of an intention to create it, unless the words "it is my *wish* and *will*" and the words "*shall* be devoted" furnish sufficient evidence of such a purpose. The effort, therefore, is to thrust upon this clause a construction that will make it create a trust, and then have the trust so raised by construction declared void, and thus to defeat *in toto* what the testator has declared to be his *donation* to the Sheppard Asylum. Now, how is this sought to be accomplished?

With great diligence, zeal, and ability vast numbers of cases construing the words "wish" and "will" and kindred words have been collected on the briefs. In those cases these words and similar ones have been held to create trusts, and it is contended they
254 accomplish that result here. It is undoubtedly true that these and other like precatory words will under conditions, but not invariably, raise or imply a trust. It would be an almost endless, as it certainly would be a wholly unprofitable, task to enter upon an examination of these numerous cases. The whole question is one of the interpretation of each particular will. Whilst the doctrine is settled that precatory words may raise a trust, the application of the doctrine to individual cases depends entirely upon the provisions of each separate will. *Negro Chase vs. Plummer*, 17 Md., 177. "Precatory words may be used which, standing alone, would under the decisions create a trust; but they may be qualified and controlled by other expressions showing that the gift is absolute, and that everything is left to the discretion of the devisee or legatee." 2 *Pom. Eq.*, sec. 1016. "Expressions sufficient *per se* to create a trust may be deprived of their effect by the context expressly declaring or by implication showing that no trust was intended." 1 *Jar. on Wills* (5th Am. ed.), star p. 385. "In some cases where the strongest terms were employed relief has been denied"—that is, a trust has not been declared. *Negro Chase vs. Plummer, supra.*

Whatever may have been the results reached in the earlier cases on this subject, there is a strong tendency nowadays to restrict the doctrine of precatory trusts within more reasonable and somewhat

narrower bounds that formerly, and Mr. Pomeroy states that upon the authority of more modern decisions the whole doctrine may be summed up in a single proposition, and this is the proposition which he announces: "In order that a trust may arise from
255 the use of precatory words, the court must be satisfied from the words themselves, taken in connection with all the other terms of the disposition, *that the testator's intention to create an express trust was as full, complete, settled, and sure as though he had given the property to hold upon a trust declared in express terms in the ordinary manner.* Unless a gift to *A*, with precatory words, in favor of *B* is in fact *equivalent in its meaning, intention, and effect* to a gift to *A* 'in trust for *B*,' then certainly no trust should be inferred." 2 *Pom. Eq.*, sec. 1016. The same doctrine is stated in *Story Eq. Jur.*, sec. 1069, in this way: "Accordingly, in more modern times, a strong disposition has been indicated not to extend this doctrine of recommendatory trusts, but, as far as the authorities will allow, to give to the words of wills their natural and ordinary sense, unless it is clear that they are designed to be used in a peremptory sense."

Whether or not a trust has been created in any given case by the use of precatory words is, in the last analysis, a question of construction and interpretation to ascertain the *intention.* Did the testator by the use of the words he employed *intend* to create a trust? "The effect of expressions of this nature in creating a trust depends entirely on the *supposed intention* of the donor (or testator) to be gathered from the tenor of the instrument." *Hill on Trustees*, 114, quoted with approval in *Williams vs. Worthington*, 49 Md., 579.

In *Sale vs. Moore*, 1 Sim., 534, Sir Anthony Hart, V. C., said:
"The first case that construed words of recommendation into
256 a command made a will for the testator, for every one knows the distinction between them." In *Wright vs. Atkyns*, 1 Ves. & B., 313, Lord Eldon remarked: "This sort of trust is generally a surprise on the intention, but it is too late to correct that." In *Meridith vs. Heneage*, 1 Sim., 542, Chief Baron Richards, in commenting on prior decisions, observed: "I entertain a strong doubt whether in many or perhaps in most of the cases the construction was not adverse to the real intention of the testator. It seems to me very singular that a person who really meant to impose the obligation established by the cases should use a course so circuitous and a language so inappropriate and obscure to express what might have been conveyed in the clearest and most usual terms—terms the most familiar to the testator himself and to the proffessional or other person who might prepare his will. In considering these cases it has always occurred to me that if I had myself made such a will as has generally been considered imperative I should never have intended it to be imperative; but, on the contrary, a mere intimation of my wish that the person to whom I had given my property should, if he pleased, prefer those whom I proposed to him, and who, next to him, were at the time the principal objects of my regard."

It certainly seems singular that a testator having a *full and settled intention to create a trust* (for that is what must be read on the face

of the will, or no trust can exist) should adopt a mode which at best appears to be a mere suggestion or inference, instead of employing the familiar method and creating the trust by an express
257 declaration; and this becomes even more singular when we find in the third clause of this identical will that a trust *is* created by the use of apt and appropriate words. Had Mr. Pratt intended to give this residuum in trust he could have used precisely the words he employed in the third clause where he designed to found a trust. "It can scarcely be presumed that every testator should not clearly understand the difference between such expressions (precatory words) and words of positive direction and command, and that in using the one and omitting the other he should not have a determinate end in view." *Story, Eq. Jur., sec.* 1069.

If there be one thing settled on this subject of the effect of precatory words it is that such words are not always imperative. "They are deemed to be flexible in character and must yield if the imputed interpretation be against the rules of law, *or so inconsistent with other* provisions of the will that both cannot stand together." *Negro Chase vs. Plummer, supra.* "Where the words of a gift expressly point to an *absolute* enjoyment by the donee himself, the natural construction of subsequent precatory words is that they express the testator's belief or wish without imposing a trust." 1 *Jar. on Wills* (5th Am. ed.), star page 389. Now we are at a loss to see how Mr. Pratt could well have given a more absolute estate in this residuum to the Sheppard Asylum than he did give in the beginning of the twelfth clause. There is not only no suggestion of a trust in the donating words, but the very scheme of the gift and the particular method prescribed for the conveyance and transfer of the
258 property by the executors to the beneficiary forbid the inference that these deeds or transfers were to contain provisions fettering the estate with any trust whatever. Obviously, he intended the asylum to hold mediately under the will—immediately under the conveyance and transfers—and he gave no intimation that anything less than the unlimited estate, unclogged by any trust, should be conveyed and transferred by his executors. The words of the gift—that is, the effective donating words—unequivocally point to an absolute enjoyment of the property by the donee, and in this important respect they radically differ from the language in *Maught vs. Getzendanner*, 65 Md., 527, where this court said: "It is manifest from the whole will that the testator never intended to give him (the legatee) this property in his own right and for his own use." At the very threshold of the residuary clause we are confronted by an absolute gift, and if the subsequent provisions of the same clause create, by the use of the precatory words alluded to, a trust that qualifies the antecedent gift, there is a palpable repugnance in the same clause. Such a repugnance is indicative of an intention not to create a trust; and when an intention not to create a trust is manifested, in this or in any other way, subsequently precatory words are to be interpreted not as cutting down the prior absolute gift, but as expressive of the testator's wish and desire without imposing an imperative direction.

We have heretofore remarked, and we now repeat, that no inflexible meaning has ever been or possibly can be ascribed to any precatory word whereby that word, whenever it happens to be used in
259 a testamentary paper, must invariably be given precisely the same and no different effect. Indeed, as observed by Pollock, C. B., in *Reg. vs. Skeen*, Bell. C. C., 97, "There is no word in the English language which does not admit of various interpretations." The varying circumstances in which it is employed give rise to its various meanings. The character of the estate given to the first taker is always a consideration of much significance in determining whether the words relied on to create a trust are recommendatory or imperative. Accordingly a distinction is drawn between cases where the gift to the first devisee is for life only and those in which the gift is absolute with superadded words—*Howarth vs. Dewell*, 6 Jur. (N. S.), 1360; *McCleman vs. McCleman*, 73 Md., 287; and precatory words which in the one case would create a trust would be insufficient to do so in the other. We are dealing now with an absolute gift followed by precatory words.

But in addition to this: "In ascertaining whether the precatory words import merely a recommendation or whether they import a definite, imperative direction to (the legatee) as to his mode of dealing with the property, the court will be guided by the consideration whether the amount he is requested to give is certain or uncertain, and whether the objects to be selected are certain or uncertain, and if there is a total absence of explicit direction as to the *quantum* to be given, or as to the objects to be selected by the donee of the property, then the court will infer from the circumstance of the testator having used precatory words, expressive only of hope, desire,
260 or request, instead of the formal words usual for the creation of a trust, that those words are used, not for the purpose of creating an imperative trust, but simply as suggestions on the part of the testator for the guidance of the donee in the distribution of the property." 1 *Jar. on Wills* (5th Am. ed.), star page 396, 397. In the celebrated case of *Morice vs. Bishop of Durham*, 10 Ves., 522, Lord Eldon held that the indefinite nature and *quantum* of the subject, or the indefinite nature of the objects referred to in a will not expressly creating a trust, is always used by the courts *as evidence* that the mind of the testator was not to create a trust. Or, as somewhat differently stated in *Handley vs. Wrightson et al.*, 60 Md., 198, precatory words will create a trust where the testator has pointed out with clearness and certainty the objects of the trust and the subject-matter on which it is to attach when the contrary intention does not appear from the context or by necessary implication.

But it must be borne in mind that there is a distinction between a trust that is void for uncertainty and an uncertainty that is simply indicative of the absence of an intention to create a trust. In the one case there is no uncertainty as to the intention to create a trust, but merely an uncertainty as to the objects to be benefited or the subject to be affected; in the other case there is simply an uncertainty as to whether any trust was intended to be created at all. If it be uncertain as to whether there was an intention to

create a trust, it is obviously not the province of the courts
261 to engraft a trust upon the gift; but if it be apparent from the whole will that a trust was intended to be established, then the uncertainty as to the objects or the subject of that trust will not indicate that there was no intention to raise a trust, but the uncertainty will avoid the trust attempted to be founded. Where the expressions have been held too vague to show an intention to create a trust, the devisee or legatee retains the property for his own use; but where the intention to create a trust is sufficiently expressed, and yet the objects or the subjects of it are uncertain, the gift fails and the heir or next of kin is let in to the beneficial ownership. It is precisely this distinction that runs through all the Maryland cases from *Tolson vs. Tolson*, 10 G. & J., 159, where the doctrine of precatory trusts was first recognized in its broadest form in this State, down to *Nun vs. O'Brien*, 83 Md., 198, the latest decision and one more in accord with the modern tendencies of the courts on this subject. So in *Saylor vs. Plaine*, 31 Md., 158, and in *Maught vs. Getzendanner*, 65 Md., 527, the intention to create trusts were both obvious and apparent, but the objects were uncertain in both instances. The trusts consequently failed, and as it was clear in each case that the legatees named were not designed to have any beneficial interest in the legacies, the next of kin took the property. It may therefore be regarded as established and settled in this State that where a trust is specifically and clearly intended to be created and there is an uncertainty in the objects to be benefited or in the subject to be affected, the trust will fail and the
262 next of kin will be entitled to the legacy. *Dashiell vs. Att'y General*, 6 H. & J., 1; *Wilderman vs. Mayor, &c., Balto.*, 8 Md., 551; *Church Extension vs. Smith*, 56 Md., 362; *Yingling vs. Miller*, 77 Md., 104. These were all cases where there was no doubt that trusts were intended to be created. Apt words were used for that purpose, but because the objects were indefinite the trusts failed. We do not question that doctrine; we distinctly reaffirm it; but where it is sought to show by implication or from the use of precatory words, following an absolute gift, that a trust was intended to be fastened on the gift, an uncertainty as to the objects or as to the subject of the alleged trust will be a reason, not necessarily conclusive, but still a reason, for holding that no trust was designed by the testator. This is very clearly stated by Lord Chancellor Truro in *Briggs vs. Penny*, 3 McN. & G., 546: "It is most important," he remarked, "to observe that vagueness in the object will unquestionably furnish reason for holding that no trust was intended, yet this may be co-ntervailed by other considerations which show that a trust was intended, while at the same time such trust is not sufficiently certain and definite to be valid and effectual." * * * See, too, *Williams vs. Worthington*, *supra*.

Now, it is contended that the direction to apply certain portions of the income "mainly to the care of the indigent insane in the most advisable manner at very low charges or absolutely free as the trustees of said corporation in the exercise of their best
263 judgment as to the rate to be charged may deem best and wisest to promote the objects of this donation" is so vague

and indefinite as not to be capable of being enforced; and it is insisted, as this direction follows the words "it is my wish and will," a trust was attempted and was intended to be created for indefinite objects, and that the next of kin and heirs-at-law are entitled to the property. If it be conceded that the objects of the alleged trust, the indigent insane, are uncertain, it by no means follows that the residuary clause must be stricken down; and it does not follow that the residuary clause must be stricken down, because, no matter how indefinite the terms "indigent insane" may be, that indefiniteness will not affect the prior absolute gift unless, instead of being an absolute gift, it was merely a gift in trust for the indigent insane. The intention to create a trust for the indigent insane must first clearly appear, as in *Dashiell vs. Att'y General* or in *Maught vs. Getzendanner*, and it must also be manifest that the legatee, the Sheppard Asylum, was not destined to have a beneficial interest, as in *Saylor vs. Plaine*, before the mere vagueness of the objects can strike down the antecedent absolute gift; but the very question at issue is whether a trust was *intended* to be raised; and to invalidate the whole bequest because the objects of the alleged trust are indefinite, before determining that there is a trust at all, is to assume the existence of the very matter in dispute—the precise thing that is controverted. Obviously, wherever, as here, there is an unqualified, absolute gift (as this became after the adoption and acceptance of the *act of* 1898, *ch.* 17, treating that act as valid), and it is alleged
264 that that gift has been cut down by the superad-ition of precatory words and converted thereby into a trust estate, the fact that there is no sufficient designation or description of the objects of the trust naturally suggests, not the inference that there was an attempt to create an unenforcible trust, but, on the contrary, leads to the conclusion that no trust at all was intended, and that therefore the precatory words were used to indicate that the testator designed to communicate a discretion and not to impose an obligation. This process of reasoning does not uphold a trust that is invalid because it is invalid, but it refuses to convert by construction an absolute gift into one upon trust when from the vagueness of the alleged trust it is apparent the testator never designed to create any trust whatever. It appeals to the uncertainty of the alleged trust to show that no trust was contemplated. Always bearing in mind that there is apparent on the face of the will a purpose that the legatee shall take a beneficial interest in the legacy, and that there is no explicit declaration of a trust coupled therewith, there is nothing in sound reason and no principle in the decided cases to preclude a resort to the uncertainty of the alleged trust for evidence apparent on the face of the will itself that the testator did not intend to declare a trust. The very uncertainty appealed to, to defeat the donation, is therefore, under the terms of this particular will, a cogent reason for holding that no trust was intended to be created at all.

"It may be laid down, however, as well settled upon all the
265 authorities that in order to justify the court in construing precatory words in a will as creating a trust it must appear that the property which is the subject of the trust is definite and

certain." *Williams vs. Worthington, supra.* There is no uncertainty in that part of the clause which respects the completion of the buildings or the construction of a new building (*Crisp vs. Crisp*, 65 Md., 422), and if there be any vagueness in regard to the subject of the alleged trust, it must be in the request or direction that the income "shall be devoted *mainly* to the care of the indigent insane." Here is an apparent uncertainty in the subject. What does *mainly* devoted mean? Does it mean the greater part of the income? If so, does it mean a fraction more than a moiety or a fraction less than the whole? Clearly the *quantum* of the subject dealt with by these precatory words is unascertained and indefinite; and this circumstance is a reason for holding, in view of all the other terms of the will, that no trust was intended.

Upon the entire will, in effect, the testator has said to the Sheppard Asylum: I give you this property upon a single condition and bargain, which is that you insert my name in your corporate title. When you have done that the property is yours absolutely. But though it is yours absolutely by your acceptance of my condition, still I wish you would do a particular thing with *part* of the *income*. But this "wish and will" clause relating to the income is not made a condition—that is, does not embody a condition—upon com-
266 pliance with which your absolute ownership of the *corpus* of the property is in any way to depend, for I have annexed but *one* condition in respect to that, and this "wish and will" clause does not contain that condition.

It should not be forgotten that words of recommendation and other words precatory in their nature imply a discretion as contradistinguished from peremptory orders, and therefore ought to be so construed "unless a different sense is *irresistibly* forced upon them by the context." *Williams vs. Worthington*, 49 Md., 585.

If we were disposed to rest the decision of this case upon mere precedent—that is, upon the construction placed on some parallel provision of another will—instead of grounding it upon principles applicable alike to all wills, we would rely on the case of *Negro Chase vs. Plummer, supra.* The will there interpreted contained an absolute bequest to the testator's sister, and there were superadded the following precatory words respecting certain slaves, part of the property absolutely bequeathed: "It is my *wish and desire*, in case my sister Minny die without issue, that she *shall* will and devise all my negroes to be free, or manumit them in any other way she may think proper; this request I hope she will comply with in time. *So as to carry my wish into effect.*" Afterwards the legatee died intestate without having manumitted the slaves, and it was contended by the slaves that they were entitled to their freedom because the precatory words raised a trust in their favor. But this court, speaking by the late Judge Tuck, said: "In the will before us the lan-
guage is as plain as in any of the cases to be found in the
267 books. On this point there is no difficulty; yet, looking to the entire instrument, the property, the nature of the supposed trust, and the requirements of our laws in reference to manumission, we have come to the conclusion that such relief (that

sought by the slaves) cannot be granted." Notwithstanding the strong expressions just quoted from the will, that it was the testator's "wish and desire" that the legatee "*shall*" liberate the bequeathed slaves, it was held that these words did not convert the absolute gift of the slaves into a gift of them upon a trust, because such a construction would have created a repugnancy in the same clause between the absolute gift and a gift upon a trust, and because the trust set up, if declared, would have been against the rules of law. It would have been contrary to the rules of law, because the mode then provided by statute for the manumission of slaves was different from the one contemplated by the will. In spite of the strong precatory words, no trust was allowed to be raised by them for the reasons just stated, but not because the words themselves would not under other conditions have been sufficient to create a trust. The case pointedly illustrates the application of the principles we have been discussing, and it unequivocally holds that precatory words of little, if of any, less apparently imperative character than those used by Mr. Pratt must yield when the whole instrument, the obvious intention of the testator, and the nature of the supposed trust indicate that it was not the purpose of the testator to create a trust at all.

268 Without going into any further discussion, we conclude by saying that, in our opinion, judging from the face of the entire will, it was not the intention of Mr. Pratt to create an imperative trust when he used the precatory words contained in the residuary clause, and that therefore the Sheppard Asylum took the property covered by the residuary clause without that property being impressed with any trust whatever. This being so, of course no question as to a perpetuity can possibly arise, and it follows necessarily, so far as the appellants in this case are concerned, that there is no error in the decree from which they have appealed. That decree denied them the right which they set up to the property disposed of by the residuary clause, and being right in this particular it will be affirmed.

Decree affirmed with costs in this court, to be paid out of the funds.

269 Court of Appeals of Maryland, October Term, 1898.

ELLEN J. O. PHINNEY ET AL.
vs.
THE TRUSTEES OF THE SHEPPARD & ENOCH PRATT HOSPITAL.

The appeal in this case, standing ready for hearing, was argued by counsel for the respective parties, and the proceedings have since been considered by the court.

It is thereupon, this twenty-first day of December, A. D. 1898, by the court of appeals of Maryland and by the authority thereof adjudged, ordered, and decreed that the decree of the circuit court number two of Baltimore city, made in this cause on the twenty-

fifth day of July, in the year 1898, be, and the same is hereby, affirmed with costs in this court, to be paid out of the fund.

JAS McSHERRY.
DAVID FOWLER.
JOHN P. BRISCOE.
HENRY PAGE.
A. HUNTER BOYD.
JAMES A. PEARCE.

Filed December 21st, 1898.

270 Court of Appeals of Maryland, October Term, 1898.

Filed December 21st, 1898.

ELLEN J. O. PHINNEY ET AL.
vs.
THE TRUSTEES OF THE SHEPPARD & ENOCH PRATT HOSPITAL *et al.*

Chief Judge McSHERRY delivered the opinion of the court:

Having decided in the preceding case that no trust was or was intended to be created by the residuary clause of Mr. Pratt's will, it remains for us now to consider the contention of the alternative residuary legatees and devisees. This contention is that the *act of assembly of* 1898, *ch.* 17, changing the name of the Sheppard asylum to the Sheppard and Enoch Pratt hospital, is unconstitutional and void; that consequently the condition upon the happening of which the property disposed of by the residuary clause was to vest in the Sheppard asylum did not come to pass, and that therefore the alternative legacy and devise in the same clause took effect and the estate devolved upon these legatees and devisees, the appellants in this case. It is insisted that this statute is invalid, because, *first*, it violates *sec.* 29, *art.* 3, of the constitution of Maryland, and because, *secondly*, it conflicts with *sec.* 10, *art.* 1, of the Constitution of the United States.

The title of *the act of* 1898, *ch.* 17, is in these words: "An act to change the name of the Trustees of the Sheppard Asylum, incorporated by the General Assembly of Maryland by the act of 1853, ch. 274, as amended by the act of 1886, ch. 9." There are two enacting sections preceded by a brief preamble. The preamble recites
271 the original incorporation. It then alludes to the great interest which Mr. Pratt manifested in the management of the institution, and declares that the purpose of the statute is to carry out the suggestion contained in his will with reference to a change of the name of the body corporate. Then follows section one, containing the effective, affirmative enactment changing the original name of "The Trustees of the Sheppard Asylum" to "The Trustees of the Sheppard and Enoch Pratt Hospital," and prescribing that the corporation by the new name shall hold all the property, enjoy all the rights, and possess all the powers and functions which were possessed by or conferred upon it under its former name, "and shall

hold in like manner all property and estate which it shall acquire by will or otherwise under said change of title hereby made." Then comes section two, providing that the act shall take effect from the date of its passage.

The provision of the State constitution which is relied on to defeat the enactment is in these words: "And every law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title." This section has been before this court a great number of times. It has been invariably held to mean that the title shall sufficiently describe the subject of the legislation, but that it need not give an abstract of the contents of the act. The primary object of the provision undoubtedly is to exclude all foreign, irrelevant, or discordant matter from a statute and to confine the
272 statute to the single subject disclosed in the title. *Davis vs. The State*, 7 Md., 151; *Mayor, &c., vs. Reitz*, 50 Md., 579; *State vs. Norris*, 70 Md., 91; *Trustees, &c., vs. Manning*, 72 Md., 133; *Scharf vs. Tasker*, 73 Md., 378. A casual glance at the body of the act under consideration will reveal its absolute and exact accordance with the title. It is true there are certain recitals in the preamble, but, strictly speaking, the preamble is no part of the statute, though it may be resorted to in explanation of the enacting clauses whenever the meaning of the latter is doubtful. *Lucas et al. vs. McBlair et al.*, 12 G. & J., 17, 18. But a preamble contains no legislation, and therefore, no matter what its statements may be, they are not parts of the subject enacted into law. The enacting clause follows, but does not precede, the preamble, and whilst the latter may disclose the reasons that induced the legislature to adopt the act, it obviously forms no part of that which *is* enacted. Even if it should be out of harmony with the body of the act, forming, as it does, no part of the statute, the statute cannot be said to contain foreign and discordant matter not disclosed in the title. But we do not regard the recitals, even if they formed part of the statute, as at variance with the subject named in the title, because at most, as already remarked, they simply state the reasons that influenced the action of the legislature.

Nor are the clauses which are contained in the body of the statute, and which declare that the corporation by the new name shall hold all the property and enjoy all the rights and possess all the powers which were possessed by or conferred upon it under its orig-
273 inal name, such foreign and discordant matter as to expose the act to the criticism that it contains provisions not disclosed in its title. These clauses add nothing to the powers formerly possessed and are merely declaratory of a result that would have followed a change in the name though they had been wholly omitted from the act, because under its new name all of the original rights, privileges, and liabilities would have remained unaffected by the change of its name. 7 *Am. & Eng. Ency.* (2nd ed.), 686. The identity of the corporation was not altered. It continued to be, under the new name, precisely the same corporate body that it formerly was, with exactly the same and no greater powers. The declaration that the corporation "shall hold in like manner all

property and estate which it shall acquire by will or otherwise under said change of title hereby made" did not enlarge its authority to take or to hold property. By its original charter it was made "able and capable in law to acquire property, real, personal, and mixed, by gift, devise, or purchase, and to hold, sell, and dispose of the same" without limitation as to amount or value. None of the clauses following the actual change of the name in the first section of the act added anything that would not have resulted by operation of law from the naked change of the corporate name, and so the section cannot be said to contain extraneous matter because these clauses are embodied in it.

The second objection is that the act is repugnant to the Federal Constitution. When the original charter of the Sheppard Asylum—*the act of* 1853, *ch.* 274—was granted, the constitution of Mary-
274 land adopted in eighteen hundred and fifty-one was in force. By *section* 47 *of article* 3 of that constitution it was provided that "corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes and in cases where in the judgment of the legislature the object of the corporation cannot be attained under general laws. *All laws and special acts pursuant to this section may be altered from time to time or repealed.*" This provision was intended to be and, as far as language could make it so, was a clear and explicit limitation upon the power of the General Assembly to pass thereafter any act of incorporation not subject to repeal or amendment by the legislature. Upon the adoption of that constitution every charter thereafter granted was subject to the paramount provision of the organic law, which was binding on the legislature and the corporation alike. The right of the State to repeal or alter a charter was an express condition upon which the grant was made in every instance after the constitution of 1851 became effective, and an acceptance of the grant was an unequivocal as it was an irrevocable acceptance of that condition. In this particular charter, by the ninth section it is expressly declared that "the General Assembly may at any time alter or amend this act." This right to alter or amend embodied in the constitution and written in the charter became a term or stipulation in the contract to which the State and the incorporators were the only parties. The right of the State under these circumstances to change the charter of a body corporate has been distinctly and finally settled by this court
275 in *State vs. N. C. R'y Co.*, 44 Md., 164; *Am. Coal Co. vs. Con. Coal Co.*, 46 Md., 22; *Appeal Tax Court vs. N. C. R'y Co.*, 50 Md., 419; *Jackson vs. Walsh*, 75 Md., 304; and by the Supreme Court of the United States in *Shields vs. Ohio*, 95 U. S., 324, and *Sinking Fund cases*, 99 U. S., 720. The State having not only under the organic law, but under the explicit terms of the contract contained in the charter, the unqualified authority to alter or amend the original act of incorporation, passed the *act of* 1898, *ch.* 17, simply changing the name of the corporation, and this act was assented to and accepted by the Trustees of the Sheppard Asylum. Even if there had been no power reserved to make such an amendment, still if

made by the State and accepted by the corporation, it would have been perfectly valid. *The Regent, &c., vs. Williams*, 9 G. & J., 416; *Jackson vs. Walsh, supra*, 316.

But, laying all this aside, it is obvious and certain that if the parties to a contract—the State and the body corporate in this instance—see fit to modify or change that contract, and accordingly do change it by a mutual concurrence, as was done by the passage of the *act of* 1898, *ch.* 17, by the State, and the acceptance of that act by the body corporate, not only is there no impairment of the obligation of the original contract, but even if there were or could be under such conditions, no one other than the *parties* to that contract could invoke the provision of the Federal Constitution to uphold it, and this the Supreme Court has recently declared in *Williams vs. Eggleston*, 170 U. S., 309. Speaking for the court, Mr.
276 Justice Brewer said: "The parties to a contract are the ones to complain of a breach, and if they are satisfied with the disposition which has been made of it and of all claims under it, a third party has no right to insist that it has been broken." Clearly, therefore, these alternative residuary legatees and devisees, who are parties to the contract contained in the charter, and who were only to take under the will in the event that the legislature did *not* change the name of the corporation, have no standing to insist that though the legislature *did* change the name, it had no power to do what it did do, and that they are consequently entitled to the property.

We hold, then, that the *act of* 1898, *ch.* 17, is not invalid for any of the reasons assigned, and as the other questions involved have been disposed in the preceding case, the decree, in so far as it affects these appellants, will be affirmed.

Decree affirmed with costs in this court, to be paid out of the fund.

277 *Petition. Filed August 26th*, 1899.

To the Honorable James McSherry, chief judge of the court of appeals of Maryland:

The petition of Ellen J. O. Phinney, Gerad C. Tobey, Horace P. Tobey, David G. Pratt, Edmund T. Pratt, Marland L. Pratt, Lowell Tyler Pratt, Emily Pratt, Stella Potter and James A. Potter, Jr., her husband, and Emily L. Pratt and Lowell Tyler Pratt, administrator of I. Lowell Pratt, deceased, respectfully shows that a final judgment has been rendered in the court of appeals of Maryland in a suit therein pending, wherein your petitioners were plaintiffs in error and appellants and "The Trustees of the Sheppard and Enoch Pratt Hospital," a corporation, was defendant in error and appellee on appeal from circuit court No. 2 of Baltimore city, which said court of appeals of Maryland is the highest court of said State in which a decree in said suit could be had, and the said final judgment and order of said court of appeals of Maryland ordered and adjudged that the decree of circuit court No. 2 of Baltimore city, from which court said suit has been taken on appeal, should be

affirmed and the bill filed in said case dismissed, and that the real and personal estate which formed the whole subject of controversy in said suit and were claimed therein under the pleadings, both by your petitioners and by the said "The Trustees of the Sheppard and Enoch Pratt Hospital," should finally vest in and be delivered to the said "The Trustees of the Sheppard and Enoch Pratt Hospital," as ordered and adjudged by said decree of said circuit
278 court No. 2 of Baltimore city; that in said suit a right and privilege are claimed under the Constitution and statutes of the United States, and the decision is against the right and privilege set up and claimed by your petitioners under said Constitution and statutes, and that in said suit there is in question the validity of a statute of and an authority exercised under a state, on the ground of their being repugnant to the Constitution and laws of the United States, and the decision is in favor of the validity of such statute and of such authority, all of which appears upon the face of the record accompanying this application.

Wherefore, to the end that the said judgment of the said court of appeals of Maryland may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error, your petitioners pray that a writ of error may be allowed, and that a citation may issue in the same manner as if the said judgment had been rendered in a circuit court of the United States.

E. J. D. CROSS,
WM. IRVINE CROSS,
Counsel for Ellen J. O. Phinney, Gerad C. Tobey, Horace P. Tobey, David G. Pratt, Edmund T. Pratt, Marland L. Pratt,
279 *Lowell Tyler Pratt, Emily Pratt, Stella Potter, James A. Potter, Jr., Her Husband; Emily L. Pratt, Lowell Tyler Pratt, Administrator of I. Lowell Pratt, Deceased.*

The above petition is granted and writ of error is allowed as therein prayed.

JAS. McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

Annapolis, August 17th, 1899.

280 *Citation. Filed August 26th*, 1899.

The United States of America to The Trustees of the Sheppard and Enoch Pratt Hospital, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the *fourteenth* day of *September* next, pursuant to a writ of error filed in the clerk's office of the court of appeals of Maryland, wherein Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, David G. Pratt, Edmund T. Pratt, Marland L. Pratt, Lowell Tyler Pratt, Emily Pratt, Stella Potter and James A. Potter, Jr., her husband, and Emily L Pratt, and Lowell Tyler Pratt, administrators of I.

Lowell Pratt, deceased, are plaintiffs in error and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James McSherry, chief judge of the court of appeals of Maryland, this *seventeenth* day of *August*, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

Service accepted this 20th day of August, 1899.

WM. PINKNEY WHYTE,
GEORGE R. WILLIS,
FRANCIS T. HOMER,
Attorneys for the Sheppard and Enoch Pratt Hospital.

281 *Writ of Error. Filed August 26th*, 1899.

THE UNITED STATES OF AMERICA, *To wit:*

The President of the United States to the honorable judges of the court of appeals of Maryland, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said court of appeals of Maryland, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Ellen J. O. Phinney, Gera-d C. Tobey, Horace P. Tobey, David G. Pratt, Edmund T. Pratt, Marland L. Pratt, Lowell Tyler Pratt, Emily Pratt, Stella Potter and James A. Potter, Jr., her husband, and Emily L. Pratt, and Lowell Tyler Pratt, administrator of I. Lowell Pratt, deceased, appellants, and "The Trustees of the Sheppard and Enoch Pratt Hospital," appellee, wherein was drawn in question the construction of a clause of the Constitution or statute of the United States and the decision was against the right or privilege set up or claimed under the said clause of the said Constitution or statute, and wherein is drawn in question the validity of a statute of or an authority exercised under a State, on the ground of their being repugnant to the Constitution and laws of the United States, and the decision was in favor of the validity of such statute and of such authority, a manifest error hath happened, to the great damage of the said Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, David G. Pratt, Edmund T. Pratt, Marland L. Pratt,
282 Lowell Tyler Pratt, Emily Pratt, Stella Potter and James A. Potter, Jr., her husband, and Emily L. Pratt, and Lowell Tyler Pratt, administrator of I. Lowell Pratt, deceased, as by their complaint appears, we, being willing that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly

and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the fourteenth day of September next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this seventeenth day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

JAS. W. CHEW,
[SEAL.] *Clerk of the Circuit Court of the United States for the District of Maryland.*

Allowed by—
JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

283 *Bond. Filed August 26th*, 1899.

Know all men by these presents that we, Ellen J. O. Phinney, of the city of Boston, in the State of Massachusetts; Gerard C. Tobey, of the town of Wareham, in the State of Massachusetts; Horace P. Tobey, of the town of Wareham, in the State of Massachusetts; David G. Pratt, of the town of Middleboro, in the State of Massachusetts; Edmund T. Pratt, of the town of Middleboro, in the State of Massachusetts; Marland L. Pratt, of the city of Boston, in the State of Massachusetts; Lowell Tyler Pratt, of the town of Brookline, in the State of Massachusetts; Emily Pratt, of the city of Boston, in the State of Massachusetts; Stella Potter and James A. Potter, Jr., her husband, of the city of Providence, in the State of Rhode Island; Emily L. Pratt, of the city of Boston, in the State of Massachusetts, and Lowell Tyler Pratt, administrator of I.Lowell Pratt, deceased, as principals, and Wm. B. Denison, of the city of Newton, in the State of Massachusetts, and Susanna K. Tobey, of the town of Wareham, in the State of Massachusetts, as sureties, are held and firmly bound unto the Trustees of the Sheppard and Enoch Pratt Hospital in the full and just sum of five thousand dollars ($5,000), to be paid unto the said parties, their certain attorney, executors, administrators, successors, or assigns; to which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this *fifteenth* day of *August*, in the year of our Lord one thousand eight hundred and ninety-
284 nine.

Whereas lately, at the city of Annapolis, in the State of Maryland, in a suit depending on appeal from the circuit court No. 2 of Baltimore city, in the court of appeals of Maryland, between the said Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey,

David G. Pratt, Edmund T. Pratt, Marland L. Pratt, Lowell Tyler Pratt, Emily Pratt, Stella Potter, and James A. Potter, Jr., her husband, and Emily L. Pratt and Lowell Tyler Pratt, administrators of I. Lowell Pratt, deceased, as plaintiffs, and the said The Trustees of the Sheppard and Enoch Pratt Hospital, as defendants, judgment was rendered against the said Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, David G. Pratt, Edmund T. Pratt, Marland L. Pratt, Lowell Tyler Pratt, Emily Pratt, Stella Potter and James A. Potter, Jr., her husband; Emily L. Pratt, and Lowell Tyler Pratt, administrator of I. Lowell Pratt, deceased, and by the order of court the judgement of the said circuit court No. 2 of Baltimore city was affirmed; and

Whereas the said Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, David G Pratt, Edmund T. Pratt, Marland L. Pratt, Lowell Tyler Pratt, Emily Pratt, Stella Potter, and James A. Potter, Jr., her husband; Emily L. Pratt, and Lowell Tyler Pratt, administrator of I. Lowell Pratt, deceased, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment and decree so entered in the aforesaid suit, and a citation has been directed to the said The Trustees of the
285 Sheppard and Enoch Pratt Hospital, citing and admonishing them to be and appear in the Supreme Court of the United States, to be holden at Washington, on the second Monday of October next:

Now, the condition of this obligation is such that if the said Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, David G. Pratt, Edmund T. Pratt, Marland L. Pratt, Lowell Tyler Pratt, Stella Potter and James A. Potter, Jr., her husband; Emily L. Pratt, and Lowell Tyler Pratt, administrator of I. Lowell Pratt, deceased, shall prosecute said bill and writ of error to effect and answer all damages and costs if they shall fail to make the said plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

ELLEN J. O. PHINNEY. [SEAL.]
GERARD C. TOBEY. [SEAL.]
HORACE P. TOBEY. [SEAL.]
DAVID G. PRATT. [SEAL.]
EDMUND T. PRATT. [SEAL.]
MARLAND L. PRATT. [SEAL.]
LOWELL TYLER PRATT. [SEAL.]
EMILY PRATT. [SEAL.]
STELLA POTTER. [SEAL.]
JAMES A. POTTER, JR., [SEAL.]
Her Husband.
EMILY L. PLATT. [SEAL.]
LOWELL TYLER PRATT, [SEAL.]
Administrator of I. Lowell Pratt, Deceased.
WILLIAM B. DENISON. [SEAL.]
SUSANNA K. TOBEY. [SEAL.]

STATE OF MASSACHUSETTS, } *To wit:*
County of Suffolk, }

On this *twenty-second* day of *July*, in the year 1899, before — personally appeared Ellen J. O. Phinney, James A. Potter, Jr.,
286 husband of Stella Potter; Marland L. Pratt, Lowell Tyler Pratt, Emily L. Pratt, and Lowell Tyler Pratt, administrator of the estate of I. Lowell Pratt, deceased; Emily Pratt, personally known to me and to me known to be the individuals described in and who executed the foregoing bond, and severally acknowledged to me that *they* executed the same for the purposes therein expressed.

Given under my hand and official seal this *twenty-second* day of *July*, 1899.

A. E. DENISON,
[SEAL.] *Notary Public.*

COMMONWEALTH OF MASSACHUSETTS, } *ss:*
Suffolk, }

CLERK'S OFFICE OF SUPERIOR COURT.

I, Joseph A. Willard, of Boston, in said county, duly elected, qualified, and sworn as clerk of the superior court for and within said county and Commonwealth, dwelling in Boston, in said county, said court being a court of record with a seal, which is hereto affixed, the records and seal of which court I have the custody, do herein and hereby, in the performance of my duty as said clerk, certify and attest that A. E. Denison, before whom the annexed affidavit, proof, or acknowledgment was taken and subscribed, is a notary public for, within, and including the whole of said Commonwealth and has authority to execute and take affidavits, proofs, and acknowledgments in all the counties in said Commonwealth, duly appointed, commissioned, qualified, sworn, and authorized by the laws of said Commonwealth to act as such, and also duly
287 authorized by the laws of said Commonwealth to take affidavits and certify proofs of acknowledgments of deeds of conveyances for lands, tenements, hereditaments lying and being in said Commonwealth, in any part thereof, and to be recorded therein, whereever situated and however bounded; that he was at the time of taking the affidavit, proof, or acknowledgment hereto annexed such notary public; that due faith and credit are and ought to be given to his official acts; that I am well acquainted with his signature and handwriting, and I verily believe that the signature to the said affidavit, proof, or acknowledgment is genuine, and, further, that the annexed instrument is executed and acknowledged according to the laws of said Commonwealth.

Witness my hand and the seal of the said court, at Boston, in said county and Commonwealth, this 24th day of July, A. D. 1899.

[SEAL.] JOS. A. WILLARD, *Clerk.*

[10-ct. rev. stamp.]

STATE OF MASSACHUSETTS, } *To wit:*
County of Suffolk, Boston, }

On this twenty-eighth day of July, in the year 1899, before me personally appeared David G. Pratt and Edmund T. Pratt, personally known to me and to me known to be the individuals described in and who executed the foregoing bond, and severally acknowledged to me that they executed the same for the purposes therein expressed.

Given under my hand and official seal this 28th day of
288 July, 1899.

[SEAL.] A. E. DENISON,
Notary Public.

STATE OF MASSACHUSETTS, } *To wit:*
County of Suffolk, }

On this thirty-first day of July, in the year 1899, before me personally appeared Gerard C. Tobey and Horace P. Tobey, personally known to me and to me known to be the individuals described in and who executed the foregoing bond, and severally acknowledged to me that they executed the same for the purposes therein expressed.

Given under my hand and official seal this thirty-first day of July, 1899.

J. WATSON TAYLOR, JR.,
[SEAL.] *Notary Public.*

COMMONWEALTH OF MASSACHUSETTS,
OFFICE OF THE SECRETARY, BOSTON, *July* 28, 1899.

[10-ct. rev. stamp.]

I hereby certify that on the 17th day of August, 1898, J. Watson Taylor, Jr., was appointed and commissioned, and on the 27th day of August, 1898, duly received the qualifying oaths thereunder as a *notary public* for the said Commonwealth for the term of *seven years* from the date of said commission; that as such notary
289 public he is by law authorized to administer oaths and take acknowledgments of deeds and other instruments throughout the Commonwealth, and that to his acts and attestations as such full faith and credit are and ought to be given in and out of court.

[SEAL.] In testimony of which I have hereunto affixed the seal of the Commonwealth the date first above written.

WM. M. OLIN,
Secretary of the Commonwealth.

STATE OF NEW HAMPSHIRE, } *ss:*
County of Belknap, }

On this 26th day of July, in the year 1899, before me personally appeared Stella Potter, personally known to me and to be the individual described in and who executed the foregoing bond, acknowledged to me that she executed the same for the purposes therein expressed.

Given under my hand and official seal this 26th day of July, 1899.

OWEN W. TIBBETTS,
Notary Public.

[SEAL.]

STATE OF NEW HAMPSHIRE, *Belknap,* } *ss:*

Supreme Court.

CLERK'S OFFICE, LACONIA, N. H.

I, E. P. Thompson, clerk of said court, the same being a court od record, hereby certify that I am well acquainted with the handwriting of and verily believe the foregoing signature, purporting to be that of Owan W. Tibbitts, Esq., true and genuine, and
290 that he was at the time of signing the same a notary public within and for said county, duly commissioned, and that he is by law authorized to administer oaths and take acknowledgement of deeds, and that said instrument is duly executed with all the formalities of the laws of this State.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Laconia, this 26th day of July, A. D. 1899.

[10-ct. U. S. revenue stamp.]

E. P. THOMPSON, *Clerk.*

COMMONWEALTH OF MASSACHUSETTS, *County of Suffolk, Boston,* } *To wit:*

On this first day of August, in the year 1899, before me personally appeared William B. Denison, personally known to me and to me known to be the individual described in and who executed the foregoing bond, and acknowledged to me that he executed the same for the purposes therein expressed.

Given under my hand and official seal this first day of August, 1899.

[SEAL.]

J. WATSON TAYLOR, JR.,
Notary Public.

COMMONWEALTH OF MASSACHUSETTS, *County of Suffolk,* } *To wit:*

On this third day of August, in the year 1899, before me personally appeared Susanna K. Tobey, personally known to me and to me known to be the individual described in and who exe-
291 cuted the foregoing bond, and acknowledged to me that she executed the same for the purposes therein expressed.

Given under my hand and official seal this third day of August, 1899.

[SEAL.]

W. L. CHIPMAN,
Notary Public.

[10-ct. U. S. rev. stamp.]

STATE OF MASSACHUSETTS, *Plymouth,* } *ss:*

I, Edward E. Hobart, clerk of the supreme judicial court for said county and State, the same being a court of record, do hereby certify that William L. Chipman, whose name is subscribed to the affidavit hereto annexed and thereon written, was at the time of the taking the same a notary public for said county and State, duly commissioned and authorized to take the same, and, further, that I am well acquainted with the handwriting of said notary and verily believe his signature thereto is genuine.

In testimony whereof I have hereto set my hand and
[SEAL.] the seal of said court this third day of August, in the year of our Lord eighteen hundred and ninety-nine.

EDWARD E. HOBART, *Clerk.*

The within bond is approved.

JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

August 17th, 1899.

292 *Certificate.*

STATE OF MARYLAND, *Clerk's Office of the Court of Appeals of Maryland,* } *To wit:*

I, Allan Rutherford, clerk of the court of appeals of Maryland, at Annapolis, the capital of said State, in obedience to the mandate of a writ of error awarded by the Hon. James McSherry, chief judge of the said court of appeals of Maryland, bearing date on the seventeenth day of August, 1899, do hereby certify that the foregoing manuscript and printed matter hereunto annexed contains a full and correct transcript of the records in the case of Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, David G. Pratt, Edmund T. Pratt, Marland L. Pratt, Lowell Tyler Pratt, Emily Pratt, Stella Potter and James A. Potter, Jr., her husband, and Emily L. Pratt, and Lowell Tyler Pratt, administrators of I. Lowell Pratt, deceased, plaintiffs in error, against The Trustees of the Sheppard and Enoch Pratt Hospital, defendants in error, in said court, as the same remains on file in the clerk's office of the said court of appeals of Maryland.

And I do further certify that the said court of appeals of Maryland is the highest court of law or equity in the State of Maryland in which a decision in said case can be had.

And I do further certify that the foregoing transcript of records contains a true copy of the appeal bond in said case which was filed in my office on the 26th day of August, 1899.

293 And I do further certify that the foregoing writ of error in said transcript of records is a true copy of said writ of error awarded by the Honorable James McSherry, the chief judge of the court of appeals of Maryland, to the judgment of said court, and I herewith transmit the original of said writ.

And I do further certify that a copy of said writ was duly filed in my office on the 26th day of August, 1899, and also the original citation herewith in said transcript contained, and that the original of said citation is herewith returned.

And I do further certify that the copy of the opinions and decrees of the court of appeals in said record delivered by said court are true copies of the same as rendered by said court in said case and on file in my office, and the said judgment in said court of appeals in said case was rendered on the 21st day of December, 1898.

Seal Court of Appeals, Maryland.

In testimony whereof I have hereunto subscribed my name as clerk of the said court of appeals and affixed the official seal of said court, at my office, in Annapolis, Maryland, on this thirty-first day of August, A. D. 1899.

ALLAN RUTHERFORD,
Clerk Court of Appeals of Maryland.

Endorsed on cover: File No., 17,506. Maryland court of appeals. Term No., 392. Ellen J. O. Phinney, Gerard C. Tobey, Horace P. Tobey, *et al.*, plaintiffs in error, *vs.* The Trustees of the Sheppard and Enoch Pratt Hospital. Filed September 6th, 1899.

No. 392.

Brf. of Cross for P. C. (mo.)

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Filed Mar. 16, 1900.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

ELLEN J. O'PHINNEY, GERARD C. TOBEY, HORACE P. TOBEY ET AL., *Plaintiffs in Error.*

vs.

THE TRUSTEES OF THE SHEPPARD AND ENOCH PRATT HOSPITAL, *Defendants in Error.*

ANSWER TO MOTION TO DISMISS THE WRIT OF ERROR.

ABNER McKINLEY,
E. J. D. CROSS,
Counsel for Plaintiffs in Error.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

ELLEN J. O'PHINNEY, GERARD C. TOBEY, HORACE P. TOBEY ET AL., *Plaintiffs in Error.*

vs.

THE TRUSTEES OF THE SHEPPARD AND ENOCH PRATT HOSPITAL, *Defendants in Error.*

ANSWER TO MOTION TO DISMISS THE WRIT OF ERROR.

In 1853 Moses Sheppard procured a charter from the State of Maryland constituting himself and others a corporation, under the title of "The Trustees of the Sheppard Asylum," to found and maintain an asylum for the insane. (Charter, Plaintiffs' Exhibit A, page 6.)

By his will in 1855 he gave to it all his estate, except a few little legacies. (Will, pages 99-100.)

On the same day he left careful instructions to his Trustees as to the institution he meant to establish, expressly desiring that it should be kept separate and distinct from any institution of a similar character. (Defendants' Exhibit Examiner G. A. P. No. 3, page 169.)

Up to the time of the transaction now dealt with there had been no endowment of the institution except by Moses Sheppard, its founder. (Testimony of George A. Pope, questions 5–8, page 113.)

It is not questioned that the institution was founded and the charter secured by Moses Sheppard and his name given to it.

In the year 1896 a will was probated, made in 1893, by one Enoch Pratt, a very wealthy man. In it he offered to the Trustees and the State what he called a "bargain," viz, that if the trustees would consent to change the name of the institution from "Asylum," as established by Sheppard, to "Hospital," and would put his whole name into the title, and the Legislature would make the change, he would leave to the said Trustees a residue of his estate. (Enoch Pratt's Will, clause 12, page 15.)

The Trustees accepted the "bargain," and the Legislature passed an Act purporting to change the name, setting forth that one object of passing the Act was the "securing for the people of Maryland the benefit of a large addition to the present buildings, etc."—so admitting a consideration moving to the State for its action. (Plaintiffs' Exhibit E. Act of 1898, ch. 17, page 17.)

Moses Sheppard had been dead forty-one years. Plaintiffs contend that the State of Maryland had no power to enter into such bargain, and that the Act so passed is an impair ment of the contract entered into by the State with Moses Sheppard and therefore void.

The fact that the offer is made in a will, the fact of the large amount offered, the fact that the high contracting parties are willing to leave the founder's name as part of the title, do not affect the principle at all. The essential fact is the offer by a capitalist of a sum of money to certain trustees and a State, if they will substitute his name for that of the founder, as given by the Charter, and the attempt by the State to make good the bargain. To look at the case in its

simplicity we must suppose the case of a living man offering the Trustees of the Johns Hopkins University in Baltimore, and the State of Maryland ten thousand dollars to change its title to the Tom Jones Brewery. Such a case is covered by the principle here involved.

We will now ask the Court's attention to the points made as to the right of the Legislature to pass this law.

Keeping of Name not a Condition of Gift.

The defendants claim that there can be no objection to this change because Moses Sheppard did not, in his will, require the keeping of the name. But it can not be claimed that the donor in such case shall provide against any and every ghoulish act. When a man had a charter gotten out in his own name, and left his whole fortune to trustees for a charitable purpose, he could hardly be expected to provide against his own trustees selling his name for a sum of money. He would just as naturally have thought of their selling his bones. We claim, therefore, that the giving of his name and the keeping of his name were a distinct part of the agreement between Moses Sheppard and the State and the Trustees. In the case of an individual the right to so treat a contract would never be upheld for a moment.

Can We Raise the Question.

Defendants in error aver that if there were a contract between the State of Maryland and Moses Sheppard, the question of this Act impairing its obligation, it could only be raised by the Trustees, the parties to the contract. Undoubtedly any ordinary question of the management of the institution itself would rest wholly with them. This case, however, is peculiar. Such a change in the case of a trading corporation would not rest with the directors, but would be of a character only to be authorized by the stockholders. Here we have no stockholders. Is there a point where the power of such Trustees ends? If the power of Trustees extends to

the effecting such a complete change, it extends to a complete alteration of the purpose of the institution. The Trustees, with the sanction of the Legislature, can change this to a brewery or other trading corporation. Or they can, with the sanction of the Legislature, wind it up, and divide the fund. The Constitution of Maryland under which this charter was given, reserves the right to alter or repeal as set forth in defendants' motion on *page 7*. There can be no doubt that such proceeding was no more foreign to the understanding of Moses Sheppard than the selling his name.

Has the founder of an institution any interest in the connection of his name with it? No one will question it for a moment. In the Dartmouth College case, Chief Justice Marshall says: "Those who are no longer interested in the property may yet retain such an interest in the preservation of their own arrangements as to have a right to insist that those arrangements shall be held sacred." (4 Wheaton, page 630.) Has he any right in it that the Courts will respect? If so, in such a case as the present, the Trustees not only do not represent him, but they are the last people to entrust with that interest. It is abhorrent to the whole nature of our law that the managers of an institution to whom a sum of money is offered to erase the name of the founder, should be the people to represent the founder's interest. Their interest is in the institution, and anything calculated to financially strengthen that institution is an appeal to their strongest motives. Their interest is directly antagonistic to any such right of the founder, if he has any right. They are really disabled from sitting on such a question. A valuable consideration is offered both to the Trustees and the State antagonistic to the interest of the founder, and we are told that they only represent that interest. Who then can raise the question? The founder is dead.

We hold that the Act of the Legislature is a nullity and any one having an interest that is affected by it can raise the question. The plaintiffs in error have a personal interest in that if the Act is void the legacy goes to them. (Will of Enoch Pratt, page 16, clause 12.)

DOES THE ACT IMPAIR THE OBLIGATION OF A CONTRACT.

What was the original contract? The Constitution under which the Sheppard Charter was passed reserved the right to alter or repeal all charters. It is needless, however, in this Court, to say that such a provision does not give the right to take property acquired on the faith of such charters. The Act admittedly obtained by Sheppard was passed in 1853, affixing his name to the institution. In 1855, *on the faith of that Act*, he gave all his property to an institution bearing his name. By the present Act the name is changed and the corporation, with the name so changed, is given in terms the right to hold all the property now held by it. (See Act 1898, ch. 17, pages 11-12.) Every dollar of that property was given by Moses Sheppard. So that we have the case of a man getting a charter in his own name, giving his property to the institution so named, and a Legislature enacting that the donor's name shall be taken from the institution, but his money shall still be held by a corporation with a different name.

The contract between the State and Moses Sheppard was a charter to "The Trustees of the Sheppard Asylum"—the grant of his estate to that corporation. "The Trustees of the Sheppard and Enoch Pratt Hospital," the new corporation. This another and separate corporation. This we submit is a violation of the Constitution.

Can it be that the power rests with the Trustees of an institution to sell the name of its founder in the open market, and that the Legislature which gave the Charter can ratify the sale?

ABNER McKINLEY,
E. J. D. CROSS,
Counsel for Plaintiffs in Error.

IN THE

SUPREME COURT OF THE UNITED STATES.

ELLEN J. O'PHINNEY, GERARD C. TOBEY, HORACE P. TOBEY ET AL., *Plaintiffs in Error*,

vs.

THE TRUSTEES OF THE SHEPPARD AND ENOCH PRATT HOSPITAL, *Defendant in Error.*

MOTION TO DISMISS THE WRIT OF ERROR.

And now comes the defendant in error, "The Trustees of the Sheppard and Enoch Pratt Hospital," a corporation created under the laws of the State of Maryland, and by its attorneys, William Pinkney Whyte, George R. Willis and Francis T. Homer, respectfully moves that the writ of error in this case be dismissed for want of jurisdiction, for the reason apparent upon the face of the record, that no federal question is presented therein or arises thereon.

The case is this:

"The Trustees of the Sheppard Asylum" was incorporated by chapter 274 of the Acts of the General Assembly of Maryland of 1853. By its second section it was provided, "That the object and design of the said corporation is hereby declared to be the founding and maintaining an asylum for the insane, the entire management of which shall be vested in the said Trustees."

It was provided in its first section, that the corporation shall be able and capable in law to acquire property, real, personal and mixed, by gift, *devise* or purchase, * * * and *generally to do every other act and thing necessary* to carry into effect the provisions of this act, and *to promote the object and design of said corporation.* (Record, page 6.)

By his will, Moses Sheppard, on the 16th January, 1855, after bequeathing to this corporation certain specific articles, devised and bequeathed to the said corporation all the rest, residue and remainder of his estate of every kind and description whatever, whether real, personal or mixed, and wheresoever situate or being, which he might own or have any right or title to at the time of his decease, and whether the same be acquired by him at that time or acquired by him at any time thereafter, to it, the said corporation, and its successors forever, it being his meaning and intention to make said corporation the residuary legatee and devisee of his last will and testament." (Record, page 99.)

In this manner this corporation began its career of usefulness.

On or about the 17th day of September, 1896, Enoch Pratt, a wealthy citizen of Baltimore, died, leaving a last will and testament, and codicil, which were duly admitted to probate, and in the residuary clause of the said last will he provided as follows:

"Having in my lifetime liberally provided for my niece and nephews hereinafter named, I do now hereby give, devise and bequeath all the rest, residue and remainder of my estate of every kind and description, whether real, personal or mixed, and wherever the same may be situated, of which I may die possessed or be in any way entitled to at the time of my death, after the payment of all debts justly due by me, and after satisfying all the devises and bequests hereinbefore set forth, to the trustees of the Sheppard Asylum, a corporation already incorporated by the General Assembly of the State of Maryland by said name, style and title, and its successors for-

ever, it being my intention and meaning to make said corporation, the trustees of the Sheppard Asylum, the residuary legatee and devisee under this, my last will and testament.

"And I direct my executors to set over, transfer and convey by proper deeds, assignments and transfers, the said residue of my estate, to the said corporation, upon and subject, however, to the following condition and bargain, namely:

"That the said trustees shall adopt as the name and style of said corporation, the title of 'The Trustees of the Sheppard and Enoch Pratt Hospital,' and shall obtain at the first session of the General Assembly of Maryland, after my death, an amendment to their charter, authorizing the said change of title and adopting the said name of 'The Trustees of the Sheppard and Enoch Pratt Hospital' as the future title of said corporation.

"While I do not wish to alter the operations and management in the working of the said asylum as now existing and being carried on, it is my wish and will, that the income from my said residuary estate shall be used to complete the present buildings and grounds and for the erection of such other buildings or building as will accommodate not less than two hundred additional inmates, and after that, the income from my aforegoing donation shall be devoted mainly to the care of the indigent insane in the most advisable manner at *very low charges* or absolutely *free*, as the trustees of said corporation in the exercise of their best judgment as to the rate to be charged, may deem best and wisest to promote the object of this donation." (Record, page 13.)

Letters testamentary were duly granted by the Orphans' Court aforesaid to James A. Gary and Arnold S. Hyde, with but a nominal bond, in accordance with the request of the testator.

They entered upon their duties without delay, and on the 26th of January, 1897, the president of the said corporation informed them by letter, that the board of trustees had adopted the following resolution: "That the Trustees of the

Sheppard Asylum agree to accept the bequest of the late Enoch Pratt on the conditions contained in the will," and that they would take proper steps to present the matter to the Legislature at its next session, and would be ready to co-operate with the executors in any way to carry out Mr. Pratt's benevolent design. (Record, page 24.)

That, subsequently, the said corporation, in compliance with the condition annexed to said bequest and devise, did apply to and obtain from the General Assembly of Maryland, at its January session, 1898, (which was the first session held by the General Assembly of Maryland after the death of the said Enoch Pratt), an amendment to its charter authorizing the change of title, and adopting the name, as suggested in said will, of The Trustees of the Sheppard and Enoch Pratt Hospital, as the future title of the said corporation, all of which will more fully appear from the Act of the General Assembly aforesaid, approved March 2, 1898, and known as Chapter 17 of the Acts of 1898. (Record, page 11.)

That subsequently to the approval of the said Act of the General Assembly by the Governor of Maryland, that is to say, on the 3d day of March, 1898, the Board of Trustees of the said Sheppard Asylum duly met and adopted a resolution, accepting the said amendment to the charter of said corporation and adopting the name, "The Trustees of the Sheppard and Enoch Pratt Hospital," as the future title of said corporation. (Record, page 13.)

The defendant in error having performed the condition imposed upon it by the will of Mr. Pratt, became entitled to the residuary estate of the testator under the provisions of his will, and the executors of his will having refused to deliver and transfer said residuary estate after demand therefor had been made, the defendant in error on the 7th day of March, 1898, filed its bill of complaint in the Circuit Court Number Two of Baltimore City against the executors of the last will and testament of Mr. Pratt to require them to transfer and deliver possession of the said residuary estate in their hands,

as such executors, in accordance with the terms of the testator's will; and thus originated the first of the cases consolidated in the Record.

On March the 10th, 1898, James A. Gary and Arnold S. Hyde, executors of Mr. Pratt's will, filed their bill of complaint in the said Circuit Court against the defendant in error; the alternative residuary legatees and devisees under Mr. Pratt's will; and the heirs at law and next of kin of Mr. Pratt, which proceeding was in the nature of a bill of interpleader; and thus was instituted the second case consolidated in the Record.

On March 12, 1898, the defendant in error filed its other bill against James A. Gary and his co-executor for an injunction and the appointment of a receiver to collect the rents and profits of, and to manage and control, the real estate passing to the defendant in error under the residuary clause of Mr. Pratt's will; and thus resulted the third case consolidated in the Record.

On the 31st day of March, 1898, Isaac Pratt, Jr., and Susanna K. Tobey, the next of kin and heirs at law of Mr. Pratt, filed their bill in the said Circuit Court against the appellees, the executors of Mr. Pratt's will, and the alternative devisees and legatees thereunder, claiming to be entitled to the entire residuary estate of the late Enoch Pratt; and thus was commenced the fourth case consolidated in the Record.

By an order of the Circuit Court Number Two of Baltimore City, the four cases above mentioned were consolidated, (page 178 of the Record), and on the same day the decree was passed determining that the defendant in error, as the residuary legatee and devisee under Mr. Pratt's will, was entitled to the residuum of his estate. (Page 190 of the Record.)

From this decree, passed on the 25th day of July, 1898, the said Isaac Pratt, Jr., and Susan K. Tobey, the heirs at law and next of kin of Enoch Pratt, the testator, and from the same decree, Ellen J. O'Phinney, Gerard C. Toby, Horace C. Tobey and others, the alternative residuary legatees

and devisees under the said last will of Enoch Pratt, (which last named parties are the plaintiffs in error here), took an appeal according to the law and practice in such cases in the State of Maryland, to the Court of Appeals of Maryland, and the said appeal was argued before the said Court of Appeals at the October term, 1898, and the decree of the said Circuit Court No. 2 of Baltimore City, made in the cause on the 25th day of July, 1898, was unanimously affirmed. (Record, pages 198 and 210.)

All of which will appear by the Record in this case and by the official report thereof, as contained in the 88th volume of the Maryland Reports, page 633.

Record, also, pages 108, 211.

So far as the decree of the Court of Appeals of Maryland, affirming the decree of the Circuit Court No. 2 of Baltimore City, affects the claim of Isaac Pratt, Jr., and Susannah K. Tobey, the heirs at law and next of kin of Enoch Pratt, the testator, it has remained unchallenged; but the plaintiffs in error, Ellen J. O'Phinney and others, the alternative residuary legatees and devisees under the said last will of Enoch Pratt, sued out the writ of error in this case. (Record, page 214.)

In this case, where the heirs at law and next of kin of the said Enoch Pratt contended that the residuary clause of the will of Enoch Pratt creates a trust, which is void, because so vague and uncertain, as to the objects to be benefited that it cannot be enforced, and that, therefore, the next of kin and heirs at law—a brother and a sister of the testator—are entitled to the residuum; and that the residuary clause creates a perpetuity, the opinion and decree of the Court of Appeals stands in favor of the defendant in error. (Record, page 198.)

Having decided in that branch of the consolidated case, in which the heirs at law and next of kin of Mr. Pratt were concerned, that no trust was, or was intended to be, created by the residuary clause of Mr. Pratt's will, the Court of

Appeals of Maryland then disposed of the contention made by the appellants, the plaintiffs in error, that the Act of Assembly of 1898, chapter 17, changing the name of the Sheppard Asylum to the Sheppard and Enoch Pratt Hospital is unconstitutional and void, as in conflict with section 10 of Article 1 of the Constitution of the United States. The opinion of the Court of Appeals of Maryland on this point is so concise and conclusive, that we ask leave to make it a part of this brief of argument:

"When the original charter of the Sheppard Asylum—the *Act of 1853, ch. 274*, was granted, the Constitution of Maryland adopted in eighteen hundred and fifty-one was in force. By *Section 47 of Article 3* of that Constitution it was provided that 'corporations may be formed under general laws, but shall not be created by special Act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the object of the corporation cannot be attained under general laws. *All laws and special Acts pursuant to this section may be altered from time to time or repealed.*' This provision was intended to be, and so far as language could make it so, was a clear and explicit limitation upon the power of the General Assembly to pass thereafter any Act of incorporation not subject to repeal or amendment by the Legislature. Upon the adoption of that constitution, every charter thereafter granted was subject to the paramount provisions of the organic law, which was binding on the Legislature and the corporation alike.

"The right of the State to repeal or alter a charter was an express condition upon which the grant was made in every instance after the Constitution of 1851 became effective, and an acceptance of the grant was an unequivocal, as it was an irrevocable, acceptance of that condition. In this particular charter by the ninth section it is expressly declared that 'the General Assembly may at any time alter or amend this Act.' This right to alter or amend embodied in the Constitution and written in the charter, became a term or stipulation in the contract to which the State and the incorporators were

the only parties. The right of the State under these circumstances to change the charter of a body corporate has been distinctly and finall settled by this Court, in State vs. N. C. Ry. Co., 44 Md. 164; Am. Coal Co. vs. Con. Coal Co., 46 Md. 22; Appeal Tax Court vs. N. C. Ry. Co., 50 Md. 419; Jackson vs. Walsh, 75 Md. 304; and by the Supreme Court of the United States, in Shields vs. Ohio, 95 U. S. 324, and Sinking Fund Cases, 89 U. S. 720. The State having not only under the organic law, but under the explicit terms of the contract contained in the charter, the unqualified authority to alter or amend the original Act of incorporation, passed the *Act of 1898, chapter 17*, simply changing the name of the corporation, and this Act was assented to and accepted by the trustees of the Sheppard Asylum. Even if there had been no power reserved to make such an amendment, still, if made by the State and accepted by the corporation, it would have been perfectly valid. The Regents, etc., vs. Williams, 9 G. & J. 416; Jackson vs. Walsh, *supra*, 316."

It is perfectly apparent that no federal question could arise, as to the impairment of a contract with the State by a subsequent amendment to a charter, which contained as a part of the original obligation, the reserved right in the General Assembly of the State to alter and amend the charter. And where the corporation, with which the State had contracted has accepted the amendment and made it part of its charter, it seems impossible, that a question as to the violation of the contract could arise.

As the Supreme Court said in the case of Wilson vs. North Carolina, 169 U. S. 595: "Upon the case made by the plaintiff in error, the federal question, ~~•~~ which he attempts to raise is so unfounded in substance, that we are justified in saying that it does not really exist."

There was, in fact, no federal question before the State Court, the decision of which was necessary to the determination of the case, for there was no party before that Court who could complain, that the Act of the General Assembly

of Maryland of 1898, chapter 17, impaired the obligation of a contract in violation of section 10 of Article 1 of the Constitution of the United States.

The plaintiffs in error had no right under any contract, with which the Act of Assembly of 1898, chapter 17 was in conflict.

The Court of Appeals clearly states this point:

"But laying all this aside, it is obvious and certain that if the parties to a contract—the State and the body corporate in this instance—see fit to modify or change that contract, and accordingly do change it by a mutual concurrence, as was done by the passage of the Act of 1898, ch. 17, by the State, and the acceptance of that act by the body corporate, not only is there no impairment of the obligation of the original contract; but even if there were, or could be under such conditions, no one other than the *parties* to that contract could invoke the provisions of the Federal Constitution to uphold it. And this the Supreme Court has recently declared in Williams vs. Eggleston, 170 U. S. 309. Speaking for the Court Mr. Justice Brewer said: 'The parties to a contract are the ones to complain of a breach, and if they are satisfied with the disposition which has been made of it and of all claims under it, a third party has no right to insist that it has been broken.' Clearly, therefore, these alternative residuary legatees and devisees, who are *not* parties to the contract contained in the charter, and who were only to take under the will in the event that the Legislature did not change the name of the corporation, have no standing to insist that, though the Legislature *did* change the name, it had no power to do what it did do; and that they are, consequently, entitled to the property.

"We hold, then, that the *Act of 1898, ch. 17*, is not invalid for any of the reasons assigned, and as the other questions involved have been disposed of in the preceding case, the decree in so far as it affects these appellants will be affirmed."

No writ of error has been sued out on this last-named decree.

It is, therefore, respectfully submitted on the part of the defendant in error, that upon the pleadings and opinion of the Court of Appeals of Maryland, that the plaintiffs in error were entire strangers to the original contract, the obligation of which, they complain, was impaired by the legislation of 1898, and they have no standing in this Court to insist that it has been broken, and therefore, the writ of error should be dismissed with costs.

WM. PINKNEY WHYTE,
GEORGE R. WILLIS,
FRANCIS T. HOMER,
Counsel for the Defendant in Error.

Baltimore, February, , 1900.

To the Plaintiffs in Error:

Gentlemen—We hereby respectfully notify you, that on the first motion day after the expiration of three weeks from this date, we shall in open Court ask leave to file the aforegoing motion and move that in accordance with its terms and for the reasons which it assigns, the writ of error in said case shall be dismissed.

WM. PINKNEY WHYTE,
GEORGE R. WILLIS,
FRANCIS T. HOMER,
Counsel for the Defendant in Error.

Service of the aforegoing motion and notice, admitted this day of February, A. D. 1900.

Counsel for Plaintiffs in Error.

Counsel for Parties.

PHINNEY *v.* SHEPPARD, &c., HOSPITAL TRUSTEES.

ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

No. 392. Submitted March 19, 1900.—Decided April 9, 1900.

Dismissed on the authorities cited.

THIS was a motion to dismiss for want of jurisdiction.

Mr. William Pinkney White, *Mr. George R. Willis* and *Mr. Francis T. Homer* for the motion.

Mr. Abner McKinley and *Mr. E. J. D. Cross* opposing.

THE CHIEF JUSTICE: Cause reported in state court, 88 Maryland, 633. Writ of error dismissed on the authority of *Williams* v. *Eggleston*, 170 U. S. 304, 309; *Hamblin* v. *Western Land Company*, 147 U. S. 531; *Wilson* v. *North Carolina*, 169 U. S. 586, 595.